

DOMESTIC LEGISLATURES AND INTERNATIONAL LAW: EXPLAINING STATE
PARTICIPATION AND COMPLIANCE WITH UNITED NATIONS HUMAN
RIGHTS TREATIES

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By
Audrey Lynn Comstock
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DOMESTIC LEGISLATURES AND INTERNATIONAL LAW: EXPLAINING STATE
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Audrey Lynn Comstock, Ph.D.

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This project examines the untapped area of international legal engagement and the dynamic ways that states use treaty actions as a means of communication. This project focuses on two central questions: 1) What explains when and why states engage with treaty law 2) What effect, if any, does engagement have on compliance levels? I argue that involvement of the domestic legislature at the ratification and implementation stages helps explain legal engagement via commitment and post-commitment actions. Timing of legal actions influences observed compliance levels. I use a multi-methods approach to address these questions. First, I collect the legal treaty actions made towards each of the core United Nations human rights treaties. Statistical analyses examine the role commitment actions have in compliance levels with treaty law. I specifically focus on the ICCPR and CEDAW treaties for empirical analysis of compliance, drawing on other human rights treaties for comparative analysis. Drawing from the cases of the United States, Canada, and the Netherlands, I examine the role of domestic legislatures on international legal behavior. In the end the timing and amount of legislative involvement in the treaty process have major consequences for how, when, and how frequently states engage with international law. States confronting legislative barriers to ratification tend to sign treaties earlier than states without barriers. For these states signature, not ratification, becomes the significant and defining point of human rights behavior change.

BIOGRAPHICAL SKETCH

Audrey Lynn Comstock will receive a PhD in Government from Cornell University in January 2017. She received a MA in Government from Cornell University in 2012 and a BA honors in Political Science from the University at Albany, State University of New York in 2009. She held a pre-doctoral fellowship at the University of California, Los Angeles, a pre-doctoral visiting fellowship at the University of Pennsylvania, and a fellowship at Drexel University.

DEDICATION PAGE

For Henry, Oliver, and Scott

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All errors are my own.

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CHAPTER 1

INTRODUCTION

International law has long been treated with scorn and skepticism. Hugo Grotius wrote in 1625 that “there is no lack of men who view this branch of law with contempt as having no reality outside of an empty name” (Prolegomena 1625). Little has changed almost 400 years later in how statesmen and scholars approach international law – with skepticism about its role and questions about whether international law is an empty form of law. One reflection of attitudes towards international law is the expression that dismisses the influence of treaty commitments on state behavior by referring to treaties as “a scrap of paper,” as German Chancellor Theobald von Bethmann-Hollweg referred to the British/Belgian treaty before the start of World War I. In drawing their conclusions about the efficacy of international law, scholars have relied on assessing state behavior before and after treaty ratification. However, states approach treaty ratification in different ways, varying greatly in how quickly they ratify treaties and the domestic processes required to achieve treaty ratification.

Some states ratify treaties as soon as treaty mechanisms allow them to do so. Some states fail to ever ratify treaties. Many states end up in a gray area in-between the two. In this space, states have signed, committing to the treaty but not yet ratifying the treaty, signifying binding legal commitment. Prior to ratification, states sign treaty law. For these states, signature is the standing commitment until ratification, sometimes years or decades later.

In this dissertation, I ask how and when does signature matter for international human rights? For what states is signature an important commitment action? I formulate an answer to these questions. I introduce an argument that draws on the importance of domestic legislative involvement in the treaty making process to help explain ratification timing and influence. Then,

I link the timing of treaty commitment to likelihood of compliance, as measured by human rights violations. A state's likelihood of ratification and legal support for treaty law does not only reflect a commitment to the issue covered by the treaty. Rather, domestic procedures on the ratification process become important in understanding the timing and likelihood of ratification. In the case of Pakistan, for example, prior to a 2013 law introducing a ratification procedure involving cabinet approval and legislative passing, the Pakistani Constitution did not detail domestic procedures for ratification. Instead, ratification fell within the powers of the president. Alternatively, Ireland requires Dáil Éireann (The House of Deputies), one of the Houses of the national parliament, approval before consenting to be bound by international treaty law. I posit that variation in domestic ratification procedures helps explain the variation in ratification timing we see in the example of Irish and Pakistani ratification timing. The variation in timing has implications on observed compliance levels. I argue that states signaling commitment via signature begin shifting their rights practices following signature. Compliance with international human rights law via rights improvements shifts after signature for these states, but thus far post-signature changes have not been widely examined by scholars of human rights law. This is an argument that has yet to be fully explored in political science and legal scholarship. States with legislative barriers to ratification tend to sign earlier than states without such barriers.

The existing scholarship linking domestic political constraints and treaty ratification begins to help us understand how, at times, the legislature can matter in the area of international treaty law. Kelley and Pevehouse (2015) find that arduous legislative procedures create higher costs in the U.S. for the president to bring treaties to the Senate floor for a vote. These procedures and their resultant costs slow the treaty ratification process. In this work, the authors highlight how legislative procedures can affect the timing of ratification. Lupu (2015) finds that

ratifying human rights treaties is more effective when there are more legislative veto players. This work highlights how legislative involvement can affect human rights behavior. Similarly, scholars have pointed to the process of international law found in treaty design (e.g. Koremenos, Lipson, and Snidal 2001; Mitchell 1994), negotiations (e.g. Goldsmith and Posner 2005), and implementation (e.g. Risse and Sikkink 1999; Hafner-Burton and Tsutsui 2007). This work points to a process of international treaty law with many points along the way, rather than an overnight phenomenon found upon ratification.

This dissertation examines an additional dynamic between legislatures and human rights treaties. I examine the role that legislative involvement with ratification plays in state commitment. In particular, I examine the emphasis states place on signature when ratification is a difficult and time consuming action. This emphasis means that for states with ratification barriers signature becomes an important tool for committing earlier than the domestic legislature will allow and the important point of behavior shifts. The relationship between legislative involvement, treaty commitment, and human rights practices is an important one for further exploration.

First, there is unexplored variation in the requirements for international treaty ratification and in the involvement of domestic legislatures. Substantial variation exists in domestic ratification procedures. Some states necessitate high thresholds for ratification, requiring approval of their legislature. The Albanian Constitution of 1991, for example, typically requires a majority legislative vote by the People's Assembly to approve treaty ratification, although the People's Assembly has the authority to put treaty ratification to a referendum.¹ Other states have no legislative involvement in the treaty ratification process. Rather, these states require the head

¹ Albanian Constitution 1991 Part IV Chapter II Article 123.

of state to ratify treaties. In Bahrain, the Amir, as head of state, maintains the sole authority to ratify international agreements. After the Amir ratifies the agreement, the “treaty shall have the force of a law.”² The differences found in domestic requirements for ratification can help explain the vast differences in ratification timing.

Second, the potential for states to face ratification delays caused by domestic legislative approval procedures can inhibit how a state engages with a treaty both long before ratification and long after. Prior to ratification, domestic legislative barriers can affect states in negotiating favorable terms in the treaty. Some scholarship points to states using the legislative barrier as a bargaining chip to prompt other states to favor terms that the domestic legislature will easily pass to elicit that state’s participation with the treaty (e.g. Putnam 1988; Galbraith 2012). However, Boggetti (1991) posits that when a legislature is not involved with or consulted on the treaty terms prior to legislative consideration, it will act as a brake and slow down the treaty ratification process.

Third, the dissertation focuses on how the area of human rights helps to fill an existing gap in the literature on international law. Political science scholars have focused on international human rights to ask the important question of what explains ratification, whether ratification can affect compliance and how regime type can matter in ratification of human rights treaties. However, political science research has yet to address the conclusion legal scholars have made – that states approach international human rights law in a way that is inherently different from other types of international law. In focusing this project on human rights law, I compare findings from prior works examining the link between domestic political constraints on ratification and

² Constitution of the State of Bahrain 1973 Article 37.

subsequent treaty engagement using non-human rights issue areas as test cases (e.g. Haftel and Thompson 2011 examination of Bilateral Investment Treaties).

In this dissertation, I draw from the literature on international law and the importance of domestic political constraints in ratification. In doing so, I expand by theorizing the role of domestic legislatures. I explain the importance of signature as a commitment action for states delayed by legislative barriers to ratification. In the next section, I introduce the core argument of this dissertation in more detail.

Outline of Chapters

Following this introduction, the rest of the dissertation addresses the core questions of this project: what role does legislative involvement play in the international treaty commitment process? What relationship do varied commitment actions have with compliance levels?

Chapter 2 provides a framework for understanding when and how states engage with international human rights law and how legal engagement influences compliance. In this chapter, I present an argument explaining why states engage with international treaty law and how engagement influences compliance behavior, and, in doing so, begin to address the above questions. I argue that an intersection between domestic and international law occurs when a state participates with treaty law through commitment and subsequent treaty actions. States engage with international law through three action types: commitment actions, supportive actions, and contentious actions. States commit to international treaties based on domestic laws and norms governing legal commitment. States then continue to participate with treaties through supportive or contentious treaty actions, communicating a domestic culture of rights to qualify their commitment or to shame other states with lackluster commitment practices. In this chapter,

I develop an argument linking domestic legislative involvement with international legal behavior. I draw from legal and international relations literatures to theorize legislative involvement during ratification and implementation stages of treaty engagement. Then, I generate testable hypotheses for state behavior.

Chapter 3 explores commitment actions. In this chapter, I focus on two human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to test some of the hypotheses presented in Chapter 2. I argue that the involvement of domestic legislatures in the ratification process has implications for timing and type of commitment action and for the levels of observed compliance. I statistically analyze the ICCPR and CEDAW treaties, testing 1) whether the presence of domestic legislative barriers to ratification matters for ratification timing and 2) if different commitment actions have different effects on rights levels. I find support for my argument: states with legislative barriers to ratification tend to sign earlier, signaling commitment earlier than states without legislative requirements. Signature, not ratification, is found to have a positive and significant effect on compliance levels for both the ICCPR and CEDAW treaties. A domestic legal culture that includes burdensome laws hindering ratification leads to later ratification, but earlier signature.

Chapters 4 through 6 are illustrative cases highlighting how legislative involvement impacts ratification timing and observable compliance. I explore how domestic legislative involvement has affected treaty commitment, compliance, and post-commitment actions in the cases of the United States, Netherlands, and Canada. These states vary in whether the domestic legislature is required during the commitment process and whether the domestic legislature is required for treaty incorporation. The Netherlands requires legislative involvement for

ratification, but not incorporation. The United States requires legislative involvement at both stages of international legal engagement. Canada does not require legislative approval for ratification, but does require it for incorporation. Through these cases, I trace how the involvement of domestic legislature influenced these states' legal behavior with United Nations Human Rights Treaties.

Chapter 4 traces the United States. In this chapter, I present a case of a state with the highest level of legislative involvement in international treaties. I describe the United States laws requiring majority legislative approval for ratification and treaty incorporation. Then, I explore the case of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and highlight the delays involved in ratification and the trends in measures of compliance. Trends in measures of racial equality improved around the time of signature, which coincided with the civil rights era of the 1960s.

Chapter 5 explores the role of the legislature in treaty law in the Netherlands. In this chapter, the Netherlands offers a case of a state with legislative approval required for ratification but no legislative approval required for implementation of international law into domestic law. I explore the treaty case of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and highlight how the domestic procedure of requiring ratification approval allowed a conservative Christian group to delay ratification despite public support for the treaty. The delay between signature and ratification of CEDAW contributed to the Netherlands shifting policies and rights behavior around signature, not ratification.

Chapter 6 explores the case of Canada. In Canada, the executive has the authority to ratify international treaty law, removing the legislature from the approval process. The legislature is heavily involved in the implementation process in Canada, influencing how and the

extent to which international laws are incorporated into domestic policy. In examining the case of the Convention on the Rights of the Child (CRC), I highlight how executive authority to ratify the treaty enabled Canada to ratify early. Rights behavior shifts coincided with ratification as signature was not used as a significant, early signal.

Chapter 7 explores non-democratic states. I statistically analyze how non-democracies engage with compliance of international human rights law, highlighting the distinction between states with legislative barriers to ratification and those without. Following statistical analysis, I explore the case of Nigeria, tracing how signing and subsequent legislative involvement with the Convention on the Rights of Persons with Disabilities (CRPD) enabled compliance with the treaty within a non-democratic context.

Chapter 8 concludes the dissertation by summarizing its findings and discussing its implications. In this concluding chapter, I reflect on the findings and arguments made across the dissertation. I discuss the research and policy implications of this dissertation and highlight several areas for future research into international state behavior. I then extend the argument focusing on domestic legislative involvement and discuss its role on state behavior beyond civil and political human rights. In doing so, I discuss the broad implications of this dissertation on human rights more broadly and international law more generally.

The Argument in Brief: Domestic Legislative Involvement and International Legal Engagement

To understand the motivating factors explaining international legal engagement with human rights law, I analyze the determinants of commitment actions and compliance levels with

United Nations human rights treaties. I explore how variation in timing and amount of domestic legislative involvement can help explain commitment timing and compliance.

In this dissertation, I develop an argument drawing on a recognition that domestic political factors are important in understanding international level behavior. I argue that the involvement of states' domestic legislatures with treaty law at the points of ratification and domestic incorporation into law are important aspects to consider to help explain international legal engagement with human rights law. Some states require legislative approval for ratification before a head of state can proceed with the treaty commitment process. In other states, the legislature plays little or no role in the formal treaty commitment process. Similarly varied is the role of the legislature in the domestic incorporation of international law. For some states, domestic incorporation is a seamless and automatic process that occurs at the point of ratification. These states align with the monist approach to international law. France, Italy, Austria, and Germany all recognize international treaty law without additional actions following ratification. Other states require the legislature to introduce and pass domestic law that implements the terms found in the international treaty law. These states align with the dualist approach to international law. Canada and the United Kingdom, for example, both require legislative incorporation of international law. The legislature can explicitly mention a treaty and implement all of its terms or selectively, and without mention to the specific treaty, implement aspects of the treaty to ensure Canada meets its legal obligation (van Ert 2010, 929).

I argue that variation across these two domestic stages of the international treaty process has important implications for state commitment, interaction with the treaty over time, and observable compliance with the terms of the treaty. This argument builds on existing scholarship highlighting the important role of the legislature in treaty ratification. Busby (2010) points to the

gate-keeper role of legislatures in delaying the Kyoto Protocol, with states with gate-keeping legislatures having more difficulty ratifying the Protocol (132). Similarly, Kelley and Pevehouse (2015) find that the executive incurs opportunity costs via time and political costs in even sending treaties to the legislative floor to vote. This argument builds on these works by focusing on the role of legislative involvement in compliance.

The next parts of this section discuss legislative involvement during the commitment and post-commitment processes. Then, I discuss how incorporating legislative involvement with treaty ratification and incorporation leads to the rethinking of how we measure compliance.

Barrier and Non-Barrier States

The presence of legislative requirements for ratification approval is the important dimension of ratification requirements I examine in this dissertation. In discussing and analyzing legislative requirements, I refer to states as barrier states or non-barrier states. In barrier states, the legislature is required by domestic law to approve treaty ratification before the state can legally consent to be bound by the treaty. In barrier states, the legislature can act as a barrier to ratification at times when the executive supports ratification but the legislature does not. In non-barrier states, legislative approval is not required and the legislature does not act as a barrier to ratification. In non-barrier states, the executive branch plays a larger role in ratification with the head of state, or cabinet members, deciding to ratify.

Commitment Types

Most scholarship analyzing commitment and compliance with international law focuses on the commitment action of ratification. In reality, when dealing with multilateral treaty law, states have several pathways to legal commitment. Concerning United Nations treaties, there are four primary ways a state can commit to international law – through signature, ratification, accession, and succession. I focus on the two-stage process of commitment in signature and ratification. Through the non-legally binding action of signature, states commit in good faith to the terms of the treaty with the expectation that they will not violate the treaty after signing and will continue with the commitment process.³ Ratification is the second and legally binding step in the commitment process by which states express their consent to be bound by the treaty.⁴

I argue that legislative involvement in the ratification process can shape which pathway states take to legal commitment with treaty law. States with domestic legislative involvement in ratification respond to potential delays in ratification by altering their other forms of legal engagement. I argue that states with these domestic ratification barriers will sign earlier to signal commitment based on delayed ratification prospects and have the potential to signal a lack of support for the treaty. The United States process of treaty ratification is notoriously prolonged, and the Senate is often labeled the “graveyard of treaties” due to its role in delaying ratification. In this state with extreme barriers to ratification, compared with other states, we find early signals of treaty support. The United States signed major treaties such as CEDAW, CERD, and the Convention on the Prevention and Punishment of the Crime of Genocide within a year of the treaties’ opening for signature. I posit that the United States, and other states with ratification barriers, use early treaty signature as a way to signal support for the treaty to the international community when domestic processes do not allow states to do so through ratification until a

³ Arts.10 and 18, Vienna Convention on the Law of Treaties 1969

⁴ Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969

much later time. The United States faced prolonged ratification delays in the three mentioned treaties. The United States ratified CERD, 28 years after signature and the Genocide Convention, 40 years after signature. It has yet to ratify CEDAW, which it signed 34 years ago.

Alternatively, states without legislative barriers to ratification have less reason to expect systematic delays in ratification and need not signal commitment early on to compensate for the signal delayed ratification sends. In addition, many states without legislative procedures for ratification opt for the commitment route of accession. Accession allows for a similar legally binding commitment as ratification, but commonly can only occur after a treaty enters into force.⁵ For example, Canada, which does not require legislative approval for treaty ratification acceded to the ICESCR (International Covenant on Economic, Social and Cultural Rights) treaty in 1976, ten years after the treaty opened for signature, without any earlier form of commitment action. Similarly, Afghanistan, also without legislative requirements for ratification, acceded to CERD in 1983, 17 years after treaty opening without earlier commitment.

Post-Commitment Actions

States engage with treaty law dynamically over time, following commitment. I term the set of legal actions states formulate following formal commitment to treaty law post-commitment actions. I argue that legislative involvement in the ratification and incorporation processes of treaty law can influence the extent to which states participate in treaty law over time.

International legal scholars have theorized about the actions of reservations in particular, but have yet to explain how domestic legal and political constraints can impact the timing and

⁵ Vienna Convention on the Law of Treaties 1969, Articles 15 and 16 discuss commitment through accession.

amount of post-commitment actions made to international human rights treaty law. Figure 2 depicts the post-commitment actions made to core United Nations human rights treaties. Across the nine treaties during the period 1966-2010, states made a total of 1819 post-commitment treaty actions falling into the supportive and contentious categories. These categories of action are based on the relationship between action and the treaty and are discussed in more detail in later parts of the dissertation.

Observable Compliance

Not only does legislative involvement influence commitment and post-commitment actions, but the ways in which it affects these stages of interaction with treaty law has implications for compliance. Thus far, scholars use ratification timing as a way to measure compliance behavior. Compliance, for political scientists, is largely defined as “a state of conformity or identity between an actor’s behavior and a specified rule” (Fisher 1981, 20; Mitchell 1994, 30; Raustiala and Slaughter 2002, 539) and theories of compliance are “theories of the behavioral influence of legal rules” (Raustiala and Slaughter 2002, 539). It is logical, in assessing the usefulness of international treaty law, to use ratification as a benchmark against which one measures behavioral shifts surrounding the rules instigated within international law. Although ratification represents a point of legally binding commitment to international treaty law, it does not offer the only point at which states could feasibly alter their behavior in response to commitment with treaty law. I argue, however, that we must take signature into consideration in assessing behavioral change or compliance surrounding international treaty law.

I offer the argument that in using signature to assess behavioral shifts related to international human rights law, scholarship can more accurately measure observable compliance. While some

scholars have called upon the field of international relations to rethink compliance as a process (e.g. Chayes and Chayes 1993), scholars have yet to embrace the importance of signature at the same level as ratification.⁶ I argue that when facing domestic legislative delays, states emphasize the importance of signature. States facing legislative barriers to ratification, such as Austria, Germany, Turkey, Poland, and the United States seek other, less burdensome ways to signal treaty support prior to domestic legislative approval. Because of this usage of signature to signal commitment, I suggest that signature should be used as a point by which to measure compliance, or behavioral change surrounding the terms of treaty law. Exploring the use of signature as a benchmark for compliance allows for the measurement of changes in state behavior that occur after signature, but are not captured after ratification. In overlooking the relationship between signature and behavioral shifts, scholarship misses the gap between signature and ratification. This gap can be years or decades of time in which a state has signaled treaty commitment and may have begun to bring its behavior into compliance with the treaty, but previous scholarship has not taken this period into account as a possible source of evidence of compliance. Although a notable example of an extended gap between signature and ratification, the United States is far from the only state to follow this pattern. Israel for example, signed the ICESCR in 1966 and ratified in 1991. Afghanistan signed CEDAW in 1980 and ratified in 2003. Gabon signed the CAT in 1986 and ratified in 2000. In each of these examples, decades lapsed between state signature and ratification of human rights treaties. Thus far, scholarship has overlooked that time for signs that behavior changed between the two commitment actions.

⁶ A notable example of scholars thinking about signature is Mitchell and Powell (2011) wherein the authors looked at explanations of signature versus ratification of the Rome Statute of the International Criminal Court (e.g. page 119). Cole (2011) also notably examined levels of commitment including signature.

Some states have yet to ratify treaties that they signed. Gambia signed the UNCAT in 1985 but has not yet ratified the treaty as of 2016. India signed the UNCAT in 1997 and has not yet ratified the treaty as of 2016. In overlooking signature as a point of behavioral shift, scholarship has not considered the changes that the non-ratifying states have made. In most analyses, signatories that have yet to ratify are coded in a similar group as those states that have not signed because neither group has ratified.⁷ In examining the UNCAT, 10 out of the 83 states that have signed the treaty have not yet ratified it. That means that 12% of these states have been excluded from analysis in existing quantitative assessments of compliance with the UNCAT (e.g. Hathaway 2007; Simmons 2009).

I seek to remedy this gap in time and analysis by using signature timing, along with ratification timing, as points by which to measure behavioral change as it relates to international human rights treaties. In doing so, I assess whether or not a significant change in state human rights behavior occurs in the period prior and following signature to human rights treaties. This analysis offers the first time that a project in political science or international legal scholarship has taken the commitment action of signature seriously in assessing and measuring compliance with international human rights law.

Importance of Dissertation Project

This project makes a unique contribution to the existing International Relations literature by analyzing the causes and consequences of international legal engagement with human rights treaty law. Subsequent chapters will compare my theory with existing studies and approaches on

⁷ Notable examples of such dichotomous coding include, but are not limited to, coding used in Hathaway 2002 and Simmons 2009.

legislative involvement with the treaty process and compliance, but I will briefly introduce the contributions my research makes in regard to existing works.

First, despite the variation that occurs across states, scholars have yet to explore the implications of cross-national differences in domestic political constraints as they relate to treaty ratification. Scholarship instead tends to focus on the United States and the particular domestic requirement of advice and consent (Kelley and Pevehouse 2015). My project therefore helps to identify and fill in an important void. I also make specific predictions about how legislative involvement influences the timing of commitment and level of compliance that other scholars can test in the future.

Legal scholars such as Damrosch (1991) point to the role of the United States Senate Advice and Consent process in weakening the strength of international treaty law by adding non-self-executing declarations. However, the role of other states' legislatures in weakening treaties through such declarations or in engaging in other ways has not been widely examined. These studies improve our understanding of how legislative requirements and protocol can impede ratification timing and treaty effectiveness, but leave little that can be generalized beyond the case of the United States. These scholars tend to highlight the uniqueness of the United States legislative requirements, when in fact many other states face similar legislative constraints during the treaty making process.

Studies that do cross-nationally examine the role of domestic political constraints on treaty ratification have yet to focus on the issue area of human rights and at times have shied away from examining multilateral treaty law. Haftel and Thompson (2011), for example, find that under certain conditions, domestic political constraints can delay ratification of bilateral investment treaties. The authors opt against examining multilateral treaties because "states can

‘accede’ to them without ever signing them, whereas bilateral treaties are always signed and then ratified by the same parties that engaged in negotiations” (10). It is true that due to legal definitions found in multilateral treaty law, only original parties to treaties can ratify. Other states must commit through accession following the treaty’s entry into force. This rule is in place, in part, due to the variation in timing of commitment. Examining multilateral treaty law helps to explore how timing and factors such as domestic political constraints influence state capabilities to commit to treaty law.

Second, existing human rights scholarship examining questions of commitment and compliance focus almost exclusively on ratification as a measure. The dominant political science scholarship examining international human rights law addresses important questions surrounding compliance and ratification. Prominent works such as Hathaway (2002), Keith (1999), Neumayer (2005), and Hafner-Burton and Tsutsui (2005) use ratification as the only legal benchmark against which to measure compliance. These analyses find that state commitment to human rights treaties often has no impact, or even negative impact on compliance. Simmons (2013) offers a critique of these statistical works, writing that they “were not specific enough about the conditions under which they expected the ratification of treaties to matter....If they had, would they not have seen the obvious explanatory limits that the ratification of the Convention Against Torture would have in Norway, a country with a perfect score on Hathaway’s scale for history of the index?” (54). Despite this thoughtful critique, Simmons uses ratification as the benchmark against which to measure compliance with human rights treaties, including the Convention against Torture, in her expansive 2009 book *Mobilizing for Human Rights*, and in doing so comes to the same conclusion about behavior such as Norway’s – there has been no change and no improvement in behavior surrounding the

ratification of international human rights law. This dissertation project contributes to the field of international human rights law by expanding the analysis beyond ratification alone, and, in including the non-binding commitment action of signature, presents new findings that challenge the bleak findings of prior research.

Third, despite a recognition from some scholars that international law is a process (e.g. Finnemore and Toope 2001), political science scholarship has largely overlooked the ways in which states engage dynamically with treaty law over time. Few political scientists have ventured into the analysis of commitment as a two-step process or examined post-commitment actions.⁸ Examination of legal engagement over time has the potential to extend and build on existing areas within international law. For example, while scholars have applied the legalization approach to treaty negotiation, little has been done to apply it to legal engagement over time. Abbott and Snidal (2000) propose a framework to understand the degree to which states legalize international regimes. States strategically choose the level of legalization of a treaty. In this understanding, for an international law to be hard, the law must be legally binding, precise, and delegate authority for implementation (421). Hard laws are more costly to negotiate but more likely to generate compliance. Soft laws are less costly to negotiate, less likely to summon compliance, and have the potential for states to negotiate them into harder laws in the future.

Treaty actions such as reservations could be important tools for states seeking softer laws with fewer legal constraints when faced with a treaty with harder terms. Increasingly, international legal scholarship has explored questions explaining why states seek to alter or

⁸ A notable example is Neumayer (2007). This work analyzes the determinants of RUDs and views such actions as qualifying ratification. The aim of this article is not to formulate a broad, theoretical explanation of international legal engagement with treaty law, but rather to highlight the determinants of what in my project I term contentious treaty actions.

qualify their commitment to international treaty law. Law scholars have begun to theorize the implications and motives behind reservation and objection timing (e.g. Diehl and Ku 2010; Helfer 2006; Goodman 2002; Swaine: 2006). However, these works have yet to test the arguments presented. Through my dissertation project, I contribute to the emerging study of treaty actions over time and offer a theoretical explanation as to the timing, direction, and amount of actions. In examining the two-step process of signature and ratification, I fully explore the process based dynamic of treaty commitment.

Scope of the Project

Why International Treaty Law?

International law comprises thousands of agreements brought together by states, non-governmental organizations, businesses, and individuals. Some scholars debate the merits of international law and are skeptical about its use as a tool for changing state behavior or even reflecting all state preferences. Hans Morgenthau wrote that states “are always anxious to shake off the restraining influence that international law might have upon their foreign policies, to use international law instead for the promotion of their national interests” (1985, 299).

However, international law does offer a codified set of rules against which we can measure the extent and conditions under which states alter their behavior. An examination of international law is fruitful in assessing when, if ever, states respond to legal guidelines. In this project, I limit examination to treaty law. This choice is not to argue that other forms of international law such as case law, customary international law, and general or natural principles of international law are unimportant areas for study. In fact, important research is beginning to

examine the use of international court decisions within domestic courts (e.g. Roberts 2011 and Fikfak 2014) and the development of customary international law over time (e.g. Goldsmith and Posner 1999; Wood forthcoming). Rather, I focus on international treaty law for the following reasons:

Frist, treaty law requires some involvement of the domestic level to approve law at the international level. This contrasts with customary international law, which through its definition, is not based on formal, legal commitment but rather “international custom, as evidence of a general practice accepted as law.”⁹ Customary international law plays an increasing role as a source of international law, but state integration of customary international law results in a lack of uniform commitment standards and timing across states. For example, in defining and exploring customary international law, Lepard (2010) diminishes state practices as criteria of demonstration of customary international law and authors D’Amato (1971, 5) and Koskenniemi (2010, 361-2) critique the conceptual use of customary international law based on inconsistency of rules, applications, and theories of customary international law. Given these aspects of customary international law, treaty law offers a more structured type of law for analysis of state behavior and domestic legal involvement.

Second, treaty law has emerged in the post-World War II period as the dominant form of international law. Thousands of treaties have been created both within and external to the United Nations treaty system. This contrasts with international case law, which while growing, has yet to reach the volume and frequency of use of treaty law. The International Court of Justice, for example, heard 134 cases between 1947 and 2014.¹⁰ Bilateral investment treaties alone totaled

⁹ Article 38(1) (b) Statute of the International Court of Justice.

¹⁰ “List of Cases Referred to the Court since 1946 by date of introduction” <http://www.icj-cij.org/docket/index.php?p1=3&p2=2>

2181 between 1990 and 2002 according to the United Nations.¹¹ The narrower treaty area of multilateral treaties deposited with the Secretary-General of the United Nations also out-totaled case law. According to the United Nations, over 500 multilateral treaties were deposited between 1948 and 2014.¹²

Why Human Rights?

International treaty law covers many issue areas, ranging from high politics issues of nuclear weapons to low politics issues covering road creation. This project limits its scope to the examination of human rights treaty law. A focus on the human rights issue area is of interest for both scholarly and policy reasons.

In the academic context, the human rights issue area offers several advantages for study. First, the analysis of human rights behavior has vastly expanded in the last twenty years. Projects such as Risse-Kappen, Ropp, and Sikkink eds. (1999) offer extensive case study analysis through which the authors explore the relationship between international human rights norms and domestic practices. Quantitative analyses such as Von Stein (2005), Neumayer (2005), Zhou (2014), Hathaway (2002), and Hafner-Burton and Tsutsui (2005) provide a host of statistical tests modeling the linkages between legal commitment and compliance with human rights treaties. Researching in this area allows for comparison across previous findings and improving understanding by building upon prior findings. Using treaties from an issue area that has been examined allows this project to compare its results to prior findings.

¹¹ “Quantitative data on bilateral investment treaties and double taxation treaties” [http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20\(IIA\)/Quantitative-data-on-bilateral-investment-treaties-and-double-taxation-treaties.aspx](http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20(IIA)/Quantitative-data-on-bilateral-investment-treaties-and-double-taxation-treaties.aspx)

¹² “International Law” <http://www.un.org/en/globalissues/internationallaw/>

In the policy context, human rights violations and issues continue to be a problem of increasing importance. The United Nations and states perpetually seek to provide resources for victims of human rights violations, improve on violating states' poor practices, and understand the ways in which global human rights can be improved. The United Nations recognizes the weaknesses in the current treaty body system, stating that only 16% of state parties submit reports to treaty bodies on time.¹³

Legal scholars posit that states use treaty actions toward human rights treaties differently than toward other issue areas. Reservations may be overrepresented and objections underrepresented. Dunoff, Ratner, and Wippman (2010) posit that reservations to human rights treaties are frequent while “most multilateral treaties are ratified with few or no reservations” (436). Scholars explain this pattern through a historic desire to encourage increased participation with human rights treaties by allowing for more reservations. When considering reservations to the Genocide Convention, the International Court of Justice Advisory Opinion wrote that human rights and humanitarian treaties were special issue areas “adopted for purely humanitarian and civilizing purpose.” As such, the ICJ desired that “as many States as possible should participate.”¹⁴ Swain (2006) highlights the argument made by Judge Rosalyn Higgins in discussing human rights treaties that states care about their own ability to make reservations but care little about other states' reservations: “The basic intuition is that states care more about preserving their right to make reservations than they do about their right to object” (327). While in other treaty areas, increased reservations may illicit increased objections, a state is “reluctant

¹³ “Strengthening the United Nations human rights treaty body system” 2010. UNHCHR pg 8.
<http://www2.ohchr.org/english/bodies/HRTD/docs/HCREportTBStrengthening.pdf>

¹⁴ Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, 1951 I.C.J. 15, 24 and discussed in Dunoff, Ratner, and Wippman (2010) pg. 436 and Alston and Goodman (2013) pg. 1081.

to accept international scrutiny of its own human rights practices” (Dunoff, Ratner, and Wippman 2010, 437).

Simmons (2009) adds that human rights issues may delay ratification, especially for common law systems because of the “emphasis they place on judge-made law through precedents and the power and independence from government of the judiciary” (71). These costs provide incentives for common law states to approach law through a dualist approach, “involving the legislative branch in laws that affect citizens” (71).

This dissertation focuses primarily on the human rights issue area and offers a brief comparison in the appendix comparing commitment actions and timing between human rights and disarmament treaties. In discussing findings and generalizing conclusions, I will consider the legal scholarship articulating the difference of practices between human rights and other areas. In the concluding dissertation chapter, I consider implications of my argument and findings across other issue areas.

Why Treaties?

I focus in particular on two core human rights treaties. The treaties covered in this dissertation both fall within the broad rights category of civil and political rights. In the conclusion chapter of the dissertation, I extend the argument and findings to physical integrity rights. Each treaty I focus on offers an example from a different period of creation and scope of rights covered.

The first treaty, ICCPR (International Covenant on Civil and Political Rights) was created in 1966 as a broad human rights treaty covering many aspects of civil and political rights

including freedom to assemble, participation in governance, women's rights, and some physical human rights including freedom from torture. This treaty offers an example of a treaty created in response to the end of WWII. Soon after creation of the United Nations, state leaders began pushing for a treaty covering a broad set of human rights. The initial push for the ICCPR treaty came when states wanted a harder articulation of the human rights presented in the Universal Declaration of Human Rights. In 1952, the General Assembly directed that two draft treaties, one focused on civil and political rights and the other on social and cultural rights be written (UNGA Res 543(VI)). An initial draft was completed by 1954 and after a prolonged negotiation process, the ICCPR treaty was adopted by the General Assembly in 1966 (Res 2200 (XXI)). The ICCPR has wide participation. As of 2014, there are 168 state parties to the treaty. The United Nations views the ICCPR as a successful treaty. In reviewing the ICCPR for the United Nations Audiovisual Library, Dr. Christian Tomuschat wrote that "It is at the national level that the ICCPR has exerted its greatest impact. When today anywhere in the world a national constitution is framed, the ICCPR serves as the natural yardstick for the drafting of a section on fundamental rights."¹⁵

The second treaty I focus on is the CEDAW (Convention for the Elimination of All Forms of Discrimination against Women), a treaty created after the immediate post-WWII time and one that focuses on a much narrower set of rights. CEDAW was created in response to continued sex and gender based discrimination despite condemnation of such discrimination in earlier treaties, such as the ICCPR. As early as 1963, the General Assembly requested a draft declaration on the elimination of discrimination against women (RES 1921 (XVIII)). During the World Conference of the International Women's Year in 1975, the conference called upon the

¹⁵ http://legal.un.org/avl/pdf/ha/iccpr/iccpr_e.pdf

Commission on the Status of Women to prepare a draft convention. After several working groups and draft conventions, the CEDAW treaty was created in 1979 and opened for signature in 1980. CEDAW is a specialized treaty covering numerous aspects of women's and gender equality rights (RES 34/180). In particular, CEDAW covers social, political, economic, family, cultural, and civil components of women's rights. As of 2014, 188 states are party to the CEDAW.

Table 1 lists the nine core United Nations human rights treaties and how I analyze the treaties throughout the dissertation. I statistically analyze two of the nine treaties (ICCPR and CEDAW), engage four of the nine in case analysis (CEDAW, CERD, CRC, and CRPD) and include all nine in descriptive analysis throughout the dissertation.

Table 1: Core Human Rights					
Treaties	Year Created	Number of State Parties	Statistical Analysis	Descriptive Analysis	Included in Case Analysis
Convention on the Elimination of All Forms of Racial Discrimination	1966	175		X	X
Covenant on Civil and Political Rights	1966	167	X	X	
Covenant on Economic, Social, and Cultural Rights	1966	160		X	

Convention on the Elimination of All Forms of Discrimination against Women	1979	187	X	X	X
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	1984	150		X	
Convention on the Rights of the Child	1989	193		X	X
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	1990	45		X	
Convention for the Protection of All Persons from Enforced Disappearance	2006	30		X	
Convention on the Rights of Persons with Disabilities	2006	109		X	X

What States?

This dissertation focuses on the role of legislative barriers and in doing so assumes a certain level of legislative capacity, independence, and general rule of law. My argument relies on states having an executive in power who both respects and is constrained by legislative

decision making enough not to be able to strong arm the legislature into ratifying treaties it opposes. Because of this assumption of a strong, independent legislature my argument speaks most readily to democratic states. The analysis in the dissertation includes both democratic and non-democratic states in large-n statistical analysis. In the case study analysis, I include the interesting case of Nigeria to demonstrate that non-democracies can still have pathways of improving human rights after signature. This case along with statistical testing isolating regime type point to the finding that non-democratic states could behave in similar ways to democratic states following signature.

Definitions

Signature and Ratification

Throughout the dissertation I emphasize the difference in definition and use of commitment via signature versus ratification. Definitions of these terms come from the Vienna Convention on the Law of Treaties from 1969. Signature is a first step in the commitment process whereby an original party to the treaty commits to not defeating the object and purpose of a treaty (Article 10 and 18), though signature is not legally binding. Ratification is the second step in the commitment process and the international act of commitment through which a state consents to be bound to a treaty (Articles 2 (1) (b), 14 (1) and 16).

Compliance

Measuring compliance with human rights law is notably fraught with both conceptual and practical problems. A perpetual problem is distinguishing the difference between states that

comply because of the treaty and states that continue existing behavior that coincides with the terms of treaty law. Simmons (2009) offers that states that already practice behavior called for in treaty law may commit as an easy way of gaining international credibility. Von Stein (2005) criticizes scholarship for underestimating the connection between existing state behavior and compliance. States may only be committing to agreements with which they are already in compliance because of their existing interests and actions. While it could be the case that behavior before and after ratification is the same, there could be behavioral changes following signature. If this is the case, then it is incorrect to dismiss all commitment forms as merely codifying existing rights practices. Some actions may prompt change.

To measure treaty compliance, I use Freedom House Political Rights and Civil Liberties measures to test compliance with the ICCPR. These measures, as with many other human rights measures, suffer from the problem of missing information and selection bias. Only reported violations are included while many human rights violations are not reported. The Freedom House measures, in particular, are blunt measures of human rights. However, their broad nature is advantageous when examining a treaty like the ICCPR that covers a broad scope of human rights it covers.

The Political Rights and Civil Liberty variables both consist of a scale of 1 to 7 with 1 as the highest level of rights and 7 the lowest. Freedom House describes a 1 on the Political Rights scale as a state that enjoys “a wide range of political rights, including free and fair elections” while a score of 7 represents states that have “few or no political rights because of severe government oppression.” A score of 1 on the Civil Liberties scale describes states that enjoy a “wide range of civil liberties including freedom of expression, assembly, association, education, and religion...a generally fair system of the rule of law.” A score of 7 denotes a state that allows

“virtually no freedom of expression or association, do not protect the rights of detainees and prisoners, and often control or dominate most economic activity.”

To measure compliance with the CEDAW treaty, I turn to data that is more targeted to capturing women’s rights. I use data from the Cingranelli and Richards Human Rights Data Base (CIRI). This data includes three separate variables that measure 1) women’s social rights 2) women’s economic rights and 3) women’s political rights. The CIRI data spans from 1980 until 2010. This data covers the time from CEDAW opening for signature until a recent year and offers more specifically targeted measures for compliance than using Freedom House’s broad measures of civil and political rights would offer.

Methods

This project uses both the quantitative analysis of original data that includes all treaty actions made towards human rights treaties beginning in 1966 up until the end of 2010 and case discussions of three states. Table 1 lists the nine core United Nations human rights treaties I draw on for examples and for data trends over time. Two treaties, the ICCPR and CEDAW, are extensively used for statistical analysis.

Using two methods allows them to complement one another and to compensate for one another’s weaknesses. Following from Lieberman (2005), this strategy engages a nested analysis approach. Large n analysis allows for the isolation of broad trends of action over time and the capability to control for other factors. Following from the large n analysis, I examine four country cases to provide “information about mechanism and context” (Collier, Brady, and

Seawright 2004, 253). Table 1 details the treaties examined, time examined, and method of examination throughout the dissertation.

Quantitative Analysis

This dissertation employs quantitative analysis to explore what effect committing to treaties has on compliance levels and whether there are differential effects between states with barriers to ratification and those without such barriers. In Chapter 3, I examine commitment treaty actions and explore the connection commitment actions have with compliance levels. Using statistical analysis allows this project to isolate broad trends and the direction of relationships between variables of interest.

The data set created for my dissertation includes all treaty actions made towards core United Nations human rights treaties between 1966 and 2010. Commitment actions are coded dichotomously, with a state receiving a score of 0 until it commits and a 1 every year thereafter.

Case Study Analysis

Throughout my dissertation, I ask how signature matters for international human rights. In the statistical analysis, I find that signature does matter for states in improving human rights practices. I draw on examples from the nine core United Nations human rights treaties and focus on four cases to illustrate how and when states improve their rights practices after signing international human rights treaties. The cases of the United States, the Netherlands, Canada, and Nigeria illustrate various possible behaviors associated with the statistical finding that states with legislative barriers to treaty ratification sign early and improve human rights prior to ratification. The Netherlands offers an illustration of a deliberate strategy on behalf of the

executive to improve human rights prior to ratification. The United States illustrates a state improving human rights behavior parallel to international process of treaty commitment. Nigeria illustrates improvement after signature due to international involvement even when the executive is unsupportive.

Three of the cases, the United States, Canada, and the Netherlands are undisputed democratic states. As the cases serve to illustrate the dynamics found through statistical tests rather than test hypotheses, the purpose of these cases is to highlight conditions under which legislative involvement has proved an important component in explaining treaty ratification timing. A fourth case of Nigeria is included as a non-democratic state to explore the dynamics in a non-democratic state that has the same legislative involvement as a democratic state analyzed, the United States.

Table 2: Dimensions of Legislative Involvement and Cases

	Legislative Approval Required for Ratification	No Legislative Approval Required for Ratification
Monist (some IL are incorporated)	Netherlands	
Dualist (legislation required for incorporation of IL)	United States - in practice Nigeria	Canada

The first case I consider is the United States, a state requiring legislative approval for ratification and domestic implementation. In exploring the United States and the CERD, this case offers an example of a state moving to improve human rights practices parallel with increasing commitment at the international level. This case illustrates how the legislature engages with international treaties when it plays the largest role in the ratification process. The legislature is involved at both key points. As a case of heightened legislative involvement, the United States is representative of a state in which treaty ratification and implementing legislation should be the most delayed by the legislature.

The second state I examine is the Netherlands, a state also requiring legislative approval for legal commitment but not requiring legislative involvement in domestic implementation of all laws. This case illustrates the relationship between legislative involvement and changes in rights behavior in a state with a mid-level of legislative involvement. The legislature is involved early on but not later with implementation. Given this combination of legislative involvement, the Netherlands offers an example of a state in which the legislature can delay treaty ratification but not implementation of international law into domestic law. In exploring the Netherlands and CEDAW, the case offers an illustration of a state deliberately waiting to ratify until its practices align more closely with treaty compliance expectations.

The third state I consider is Canada, a state not requiring legislative approval for ratification but that does require legislative implementation of international law into domestic law. This case illustrates the relationship between legislative involvements and compliance when the legislature is not involved in ratification. In Canada, the legislature is not involved early in the process but is later on. With this combination of legislative involvement, Canada

offers an example of a state wherein there is little or no delay upon the executive to ratify treaty law but a sizable obstacle to implementing international law into domestic law.

The fourth state I explore is Nigeria. Nigeria requires legislative approval for treaty ratification and legislative implementation of international law into domestic law. Nigeria also has a strong, authoritarian executive who does not always agree with or respond to the provisions passed by the legislature. This case illustrates the relationship between legislative involvement and compliance when the executive does not de facto support domestic implementation of international human rights. The Nigerian case illustrates how, through international involvement, there can be improvement in human rights after signature even when the executive is unwilling to support ratification and human rights progress.

Examining these states in greater detail allows me to illustrate whether, how, and to what extent domestic legislative involvement with treaties can influence international legal engagement with human rights law. The United States, the Netherlands, and Canada fall within a liberal democracy regime type although they offer important variation in domestic legislative involvement with treaty law as exemplified in states with strong rule of law and functioning legislatures. Even in non-democracies, the relationship between legislative involvement and signature remains important. Throughout the case of Nigeria and statistical analyses in the dissertation, I control for regime type to ensure that any potential role of regime type alone on international legal engagement and/or treaty compliance is captured.

Through the analysis of these cases and statistical analysis, I conclude that the timing and extent of domestic legislative involvement in the treaty process helps to explain how and when states commit, what level of compliance is observed, and the extent to which a state will make supportive or contentious treaty actions.

CHAPTER 2

Argument and Hypothesizing Legislative Involvement with Treaty Law

The increase in international treaties and agreements over the last sixty years poses a puzzling area for exploration. Why have states continued to commit to treaties despite the possible loss of state sovereignty that may accompany altering state behavior in compliance? Why do states meet treaty requirements and yet delay or fail to ratify? Human rights groups are quick to criticize states that do not ratify human rights treaties. Does a lack of or delay in ratification reflect a lack of commitment, legal and otherwise, to human rights?

In this chapter, I draw from literature and examples to develop an argument connecting domestic laws and international legal behavior. I specifically examine the role of a state's domestic legislature in international treaty commitment and implementation. Compliance with international law is a process that does not occur overnight. I argue that the process dynamic of international law is especially evident in international treaty law with a two-step commitment process of signature followed by ratification. The first step of signature allows states to signal commitment before the second step of ratification, which legally binds states to the treaty. States confronting legislative barriers to ratification are especially likely to lean on the use of signature to communicate commitment to treaty law. I posit that the involvement of the legislature in ratification influences how and when states commit to international treaties. Ratification barriers were statistically significant and positive in explaining ratification times to the ICESCR and CEDAW (Simmons 2009, 83). The relationship between ratification barriers and ratification timing merits further examination including consideration of the role of other types of commitment actions such as signature, accession, and succession to consideration. In this chapter, I unpack this argument. I describe the legal processes at the international and domestic

levels states undergo to commit to treaty law including the two-step commitment process of signature and ratification along with the different domestic thresholds states confront to ratifying international treaties. Then, I consider the significance of the human rights issue area of international law. Taking the extent of involvement of the domestic legislature in ratification and the type of commitment action pursued, I hypothesize state compliance levels and timing with international human rights treaties.

Domestic procedures for ratification approval determine an important element of the level of difficulty for state ratification of international treaty law. Some states only require executive approval to ratify, while others require legislative approval. The additional step of legislative approval shapes when and how states can commit. I argue that domestic laws pertaining to the level of difficulty in commitment affects the timing and level of commitment. States with the requirement of legislative approval often take longer to fully commit to treaty law, resulting in a longer amount of time with only non-binding commitment. The time lag is important because the longer the time between initial commitment and fully binding commitment, the longer a state has to adjust its practices and existing domestic law. The additional time means that by the time a state does legally commit, it is likely to have already adjusted its practices. I posit that the difference in commitment requirements and legal obligation levels creates two distinct results from signature and ratification. States with legislative hurdles to ratification sign early on to signal commitment, but cannot ratify until, in some cases, years later. Even when ratification happens quickly for states with barriers, the state anticipates that ratification can be delayed due to the existing constraints in place. This anticipation causes states with barriers to sign earlier than non-barrier states even in cases when domestic legislatures ultimately ratify treaty law quickly because the state knows that there is

always the possibility for excessive delays to ratification. When the states with legislative approval requirements do ratify, they are doing so not to signal their commitment message, but to cement in their position. The earlier signature signal has already been sent prior to ratification. This distinction in relative ease or difficulty in ratifying treaty law results in states approaching commitment through different actions to signal support for treaties.

A Two-step Commitment Process

The position that law, and more specifically, ratification, is a process is not a new one. Finnemore and Toope (2000) point to the process of international law and argue that “law...may be much more about process than about form or product” (750). The authors are responding to the legalization approach which centers more on legal, dispute resolution, and formal outcomes of international law. This critique withstanding, legalization scholars point to the distinction between soft and hard law and the appeal for some states to move from a less binding, softer law into a harder law over time (Abbot and Snidal 2000). Even quantitative scholars analyzing the role of ratification caution against interpreting its influence as taking immediate effect (e.g. Camp Keith 1999).

Given these works, the idea of international legal commitment taking time, effort, and multiple imputations is not new. However, the study of international treaty commitment as a process has largely been overlooked in the respect that multilateral treaty commitment is a two-step process of commitment. The institutional definitions and processes of United Nations multilateral treaties emphasizes the two-step commitment process of signature followed by ratification.

Commitment actions are “international act(s) so named whereby a State establishes on the international plane its consent to be bound by a treaty”¹⁶ in essence, legally requiring a state to comply with international law.¹⁷ Existing scholarship on international treaty law examines the commitment action of ratification. States can legally commit to treaty law through the commitment actions of signature, ratification, and accession. Signature is an initial act signaling a commitment to the treaty but does not legally bind a state. While the Vienna Convention on the Law of Treaties (1969) understands signature to be a good faith commitment action, states and scholars alike have not taken signature seriously as a legally binding action. For legal purposes, the United States notes treaties it has only signed, commenting that it recognizes only parts of the Vienna Convention as customary international law. For example, this author is unaware of any political science study that systematically includes signature actions when examining types of commitment or when measuring compliance with human rights treaties. Von Stein (2005) tested the role of signature of an IMF clause on compliance and found a significant relationship. Other subsequent studies have yet to apply the examination of signature actions to other issue areas of international law. Many states follow signature actions with ratification actions. As Figure 1 depicts, the most frequent commitment actions made to core United Nations human rights treaties was the action of signature. Signature actions constitute 40% of commitment actions while ratifications comprise 32% of actions. Many states that sign do continue on to ratify treaties, but there is often a delay in time between the two actions, and some states never do

¹⁶ United Nations *Vienna Convention on the Law of Treaties*, 23 May 1969, Article 2(b) United Nations, Treaty Series, vol. 1155, p. 331, available at: <http://www.refworld.org/docid/3ae6b3a10.html> [accessed 1 October 2013]

¹⁷ There is expectation with all commitment actions, including signatures that states will make a good faith effort to comply with the treaty.

United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: <http://www.refworld.org/docid/3ae6b3a10.html> [accessed 1 October 2013]

ratify. Due to the different levels of legally binding status, the different domestic requirements for actions, and the gap in actions, it is important to separate out signature and ratification when analyzing how states commit to international treaty law.

Table 3:	Treaty Actions at the United Nations
Action Type	Description
<i>Commitment Actions</i>	
Signature	Non-legally binding commitment action. States must refrain from acts that would violate the purpose of the treaty after signing. ¹⁸
Ratification	The action whereby a state consents to be legally bound by the treaty. ¹⁹
Accession	The action whereby a state, that is not an original party to the treaty, consents to be legally bound by the treaty. ²⁰
Succession	The replacement of one state by another in the responsibility for the international relations of territory ²¹

Signature

Signing a treaty is the first step in legal commitment. Most states that sign human rights treaties finish the commitment process and ratify. As noted, the domestic ratification process can be a difficult one, but signatories do go through it. Concerning the ICCPR, most of the states that signed did follow through with binding commitment. Only 7 out of the 75 signatories have yet to fully commit.²² Only 5 out of the 87 signatories to the CERD did not fully commit.²³ Even

¹⁸ Vienna Convention on the Law of Treaties 1969 Articles 10 and 18

¹⁹ Ibid Article 14.

²⁰ Ibid Article 15.

²¹ Vienna Convention on Succession of States in Respect of Treaties 1978 Article 2(1)(b)

²² As of January 2014.

²³ As of January 2014. United Nations Treaty Collection

in a more contentious treaty such as the Convention against Torture (CAT), only 10 of the 81 signatories did not follow through with full legally binding commitment.

Signature offers a viable and less costly commitment alternative to legally binding options. Under international law governing treaty law, signature is viewed as an important act of commitment. Article 18 of the Vienna Convention on the Law of Treaties 1969 obligates states to “refrain from acts which would defeat the object and purpose of a treaty” following treaty signature. International organizations such as the United Nations encourage states to sign treaties and hold annual signing events to promote and celebrate treaty signature.

Signature is less politically costly than ratification because it does not require legislative approval and therefore allows states to forgo the legislative approval requirements and delays that accompany. For states wherein the legislature is empowered to ratify treaty law, such as Albania, ratification takes a different track than states like Australia without legislative approval requirements. Article 121 of the Albanian Constitution situates the power to ratify treaties in Parliament if the international agreement covers issues of:

- a. Territory, peace, alliances, political and military issues
- b. Freedoms, human rights, and obligations of citizens as provided in the Constitution
- c. Membership of the Republic of Albania in international organizations
- d. The undertaking of financial obligations by the Republic of Albania
- e. The approval, amendment, supplementing or real of laws (Albanian Constitution 1998 Part 7, Chapter 1, Article 121 a-e)

Article 92 of the Albanian Constitution grants the power of signing international agreements to the president. Given the involvement of the legislature in treaty ratification, it is not surprising that Albania missed the window of opportunity to be an original party to the CAT, ICCPR,

CEDAW, CERD, and CESC. The only core human rights treaties Albania was able to commit to quickly enough to avoid commitment via accession were the CED and the CRC.

In Australia, Section 61 of the Australian Constitution grants the executive the authority to ratify international treaties. The Australian Parliament only serves an informal role in treaty ratification. The executive presents the ratified treaty to Parliament, wherein it is tabled for at least 15 days before it goes into effect in domestic law. Given the role of the Australian Prime Minister in treaty commitment, Australia was able to avoid commitment via accession and ratify the CAT, CCPR, CEDAW, CERD, CESC, CRC, and the CRPD.

I argue that states facing legislative barriers to ratification use signature as an earlier form of commitment to signal support for international treaty law. As a non-binding step in the commitment process, signature offers an alternative to fully ratifying while communicating a state's commitment. The lower level of commitment sets signature apart from other legally binding actions such as ratification. Signature is a domestically feasible option for committing while ratification is one to solidify state positions and reputation in an issue area. While signature occurs at a time of improved rights practices by the time a state ratifies, its rights practices have stabilized.

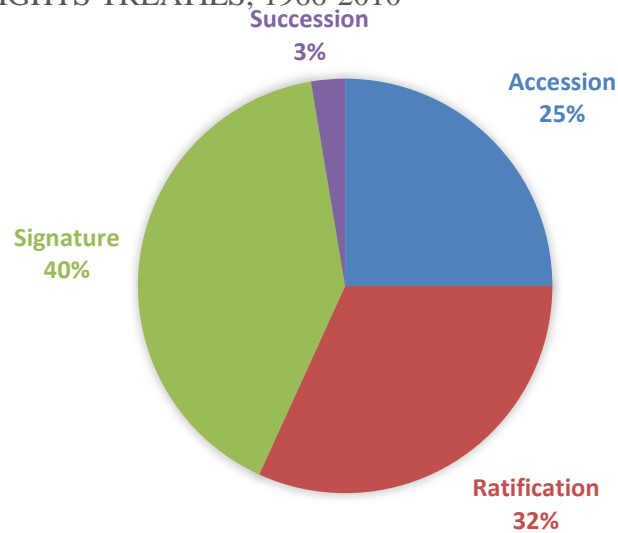
Rather than only cheap talk, signature serves an important purpose in international legal behavior. Signature allows for state communication of sincere commitment: 1. Signature allows states to commit early in the process instead of waiting for increased domestic support (ratification) or the treaty to enter into effect (accession) 2. Signature often requires executive, rather than legislative approval, simplifying the commitment process. 3. Signature allows a state to complete legal commitment at a time when it is prepared to do so. States that sign treaties, by and large, eventually do ratify them.

The distinction between executive and legislative dominance in the commitment process is an important one that enables earlier treaty commitment. Because of the reduced legal commitment, states often do not have the same domestic legal barriers in place for signature as ratification. The option of signature allows states to commit to human rights treaties before gaining the full domestic institutional support, often required for ratification. This may be especially appealing for democracies, which tend to require domestic approval of ratification through a legislative or committee process.²⁴ Signature requirements contrast with more daunting ratification requirements. Simmons notes that “By far the most typical arrangement (for ratification), is the need for a simple majority vote in a unicameral legislature. Bicameral approval and supermajorities are higher hurdles still” (2009, 68).

The act of signature has implications for state compliance for states with barriers to ratification. States not confronting these barriers have less incentive to use signature in a similar way. I do not expect that states without domestic legislative barriers to ratification will approach treaty signature in the same way as states with barriers. States without ratification barriers allow the executive signal commitment via ratification when they are ready rather than when the legislature is reading. Therefore signature is not necessarily reflective of a time of significant change in rights behavior for states without ratification barriers.

²⁴ E.g. the United States, Netherlands, Belgium, Canada after 2008, etc.

FIGURE 1: TOTAL COMMITMENT ACTIONS, BY TYPE IN CORE UNITED NATIONS HUMAN RIGHTS TREATIES, 1966-2010



Commitment through Accession and Succession

Previous scholarship tends to lump accession and succession actions with ratification actions because of their similarly binding nature.²⁵ However, there are important differences between these actions in terms of timing and the role of domestic legislatures. These differences have important implications for how compliance is observed.

As discussed, ratification is a follow up commitment step to signature that generally requires legislative approval. Accession generally is an executive action. States do not necessarily need to wait for a high level of domestic approval before committing through accession. This separates accession from the dynamic found between signature and ratification. A second major difference between accession and ratification is timing. States that miss the window of opportunity to become original parties to a treaty must wait until they are allowed to accede to the treaty. States that accede to treaty law do so following the treaty going into effect.

²⁵ E.g. Simmons 2009 and Hathaway 2002

Treaty entry into force date is written into treaty text and occurs upon a designated date or upon an agreed upon threshold of state support via ratification.

The time it takes treaties to go into force can vary, but across issue areas time and again, entry into force takes years. The UN CAT opened for signature on December 10, 1984. The treaty entered into force on June 26, 1987. Article 27 of the CAT specifies entry into force on “the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.” This practice carries across issue areas of international law beyond human rights. Article 80 of the Constitution of the World Health Organization reads that it will “come into force when twenty-six members of the United Nations have become parties to it.” The Convention opened for signature July 22, 1946 and came into force April 7, 1948. The Convention on the Transboundary Effects of Industrial Accidents opened for signature September 18, 1992 and did not go into force until April 19, 2000, “the ninetieth day after the date of deposit of the sixteenth instrument of ratification.”

The delay gives states additional time to adjust domestic practices and laws to reflect the standards found within the treaty. Because of this, we should expect that commitment through accession will not have the same observable level of positive effect on compliance as signature. Including analysis of accession and succession allows me to test hypotheses related to and following from those pertaining to signature and ratification. States that accede to human rights treaties rather than follow the signature and ratification processes should have already adjusted their rights behavior. In this chapter, I include accession in statistical analyses to test the effect of state treaty accession on compliance levels. I further explore this relationship in Chapter 5 during case analysis highlighting Canada’s engagement with international human rights treaties.

International law requires that new states renew treaty commitment through the act of succession, but states have some flexibility in when they do it.²⁶ As the pre-existing state already committed to the treaty, there may be domestic laws, institutions, and norms in place that support the treaty. However, the transition between states may have resulted in a loss of legal stability that would maintain existing norms and practices. Because there has been a dramatic change in governance and leadership, there may be a drastic difference in rights practices at the end of one state and the time the new state chooses to commit through succession. With this change, there is the possibility that commitment will coincide with a significant change in rights practices. There is reason to expect a significant and observable change in practices before succession, when the old state was in power, and following succession, when the new state is in power.

Succession is the least frequent type of treaty commitment, comprising only 3% of commitment actions to the core human rights treaties. Commitment through succession occurs only when a state's government has changed and the new government reinstates commitment to international law. This has happened only rarely in international history. For example, following the division of Czechoslovakia, both the Czech Republic and Slovak governments were required to reassess all international commitments to either renew commitment through succession or to opt out of the international agreements. Following a peaceful transition from one state into two during the Velvet Revolution, the former Czechoslovakia transitioned towards more democratic and open states. As the Czech Republic and Slovakia emerged as distinct new states in 1993, each state faced choices when committing to international law. Recommitment through succession was timed around the transition to increased rights recognition and coincided

²⁶ For example, the Czech Republic and Slovakia have different dates of treaty succession.

with better rights practices. Prior to the transition, Czechoslovakia received the Freedom House scores of 7's and 6's (the worst rights scores). Following the Velvet Revolution, Czechoslovakia's scores increased dramatically to 2's and upon independence, the Czech Republic received scores of 1's across Freedom House measures (the highest possible score). Slovakia also had a markedly improved recognition of rights following the Velvet Revolution, increasing rights scores from 7's to 4's, and within several years to 2's. Both the Czech Republic and Slovakia committed through succession to international treaty law soon after independence in 1992 and 1993. These acts of succession time with the transition towards democratization and increased rights recognition. Therefore, we should expect that states that commit through succession do so as part of a larger trend towards rights recognition and that this trend will be captured when testing for compliance with human rights treaties.

Succession is not expected to be over or under represented in human rights treaties, as upon the creation of new states and governments, the states must reassess and recommit to all issue areas of international law. Scholars have not separated out this small category of action, although it is of interest based on the trend in highlighting the importance of regime transitions, and democratic transitions in particular, when it comes to explaining political practices (e.g. Diamond 2002 and Bratton and van de Walle 1997).

Several other treaties took 10 years or longer to enter into force. The ICCPR and ICESCR entered into force in 1976, 10 years after opening for signature. The CMW entered into force in 2003, 13 years after opening for signature. Entry into force required a threshold of ratifications for both of these treaties. As previously noted, the timing of entry into force defined when non-original parties to the treaties could commit through accession. Concerning CEDAW, a non-original party could commit through accession soon after opening for signature,

and did not face a large delay. The treaties with later entry into force, delayed non-original treaty parties from participation. Figure 3 shows that accession actions make up 25% of commitment actions toward human rights treaties. Many of these accession states may have been confronted with institutionalized commitment delays at the international level despite the potential lack of legal delays to commitment at the domestic level.

I posit that domestic law influences treaty commitment through laws governing the difficulty of treaty commitment and the laws governing how international law is incorporated into domestic law. Without exploring the domestic legal context that constrains state legal actions at the international level, we cannot fully understand the commitment choices states make. For some states, legislative action is required for commitment and other states legislative action is required for incorporation. The variation in the extent to which and when the legislature is involved in the treaty engagement process changes how states interact with international treaty law.

Legislative Involvement in the Treaty Process

Drawing from the research found in political science highlighting the importance of domestic ratification procedures and the focus of legal scholarship on the importance of the monist/ dualist divide, in this section I develop an argument linking legislative involvement in the treaty process to international legal engagement and compliance observed levels. I argue that when and how a state's legislature is involved in the treaty law process has important implications for state legal behavior including timing of commitment and of post-commitment treaty actions. Almost every state legislature is involved at some point with treaty law, although the timing of involvement and the extent of involvement varies across states. I argue that the

interplay of whether or not a state's legislature must approve treaty ratification and whether or not the legislature must formally incorporate international law into domestic law changes how states commit to, lodge post- commitment actions, and comply with international treaty law.

Table 2 depicts the variation between the two categories and lists example states in each box to coincide with legislative involvement during the treaty process. In this section, I discuss how each point of legislative involvement affects states as they engage with treaty law. Then, I examine junctures at which legislative involvement influences state behavior: 1) during commitment as well as 2) compliance behavior. Finally, I generate testable hypotheses linking legislative involvement and international legal behavior.

Legislative Approval for Ratification

The first point a state's legislature can play an important role in international treaty law is during treaty commitment. States operate within the legal context of domestic laws and are guided by those laws to appropriate commitment actions. Domestic laws vary in how difficult they make it for states to legally bind themselves to international treaties. The primary difference between domestic legal requirements for treaty commitment is whether binding legal commitment requires the approval of the legislature or only executive approval. This difference highlights the varying role of legal institutions across states when it concerns international law. Some states require legislative approval before a state can legally obligate itself to comply with treaty law, while other states do not have this requirement. This is an important distinction. In these latter states, the executive in power can legally commit without legislative approval. Whether a state's domestic law requires the legislative approval or not shapes how quickly a

state can commit to treaties. Timing of treaty commitment influences, in turn, observed compliance levels.

Several large-n studies have examined domestic ratification processes and ratification timing. Simmons (2009) briefly notes, “There is also fairly good evidence that ratification procedures make it much harder for a government that might support a treaty in principle actually to ratify” (87). She finds some support for the argument that domestic institutional barriers slowed ratification to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW); however, she does not extend the consideration of domestic barriers to questions of compliance. Haftel and Thompson (2013) examine the delayed ratification of bilateral investment treaties and point to constraints on the executive and the relationship between treaty partners as explanations for delays in ratification. The authors find that domestic political constraints can delay ratification while open political systems mitigate the delay, because leaders can “rationally anticipate these obstacles” (Haftel and Thompson 2013, 382). This work is an important look at the complex relationship between domestic constraints and ratification. More work is needed to extend this look into multilateral treaties, other issue areas, and to examine how domestic political constraints can influence compliance after commitment.

Many works that consider the role of domestic politics on treaty ratification are United States centric (e.g. Haller and Holden 1997; Kelley and Pevehouse 2015; Kritz and Peake 2009; and Moravcsik 2005). The examination of other states is important to capture what effect legislative involvement may have in treaty engagement. Von Stein (2012) suggests that the legislative approval requirement for ratification delayed ratification in Chile even when the legislature was supportive of ratification (18). Many other states do not require legislative

approval for ratification to take place. For example, Algeria does not require legislative approval for treaty ratification. Instead, the president alone has the power to ratify. As part of a set of constitutional amendments made in 1996 expanding the role of the executive, Article 77(9) states, “In addition to the powers bestowed, explicitly, upon him by other provisions of the Constitution, the President of the Republic has the following powers and prerogatives...he concludes and ratifies international treaties.”²⁷

Measuring Legislative Involvement

Based on the domestic differences in treaty commitment requirements, I divide states into two categories for analysis in this dissertation. The first category consists of states that require legislative approval for treaty ratification. The second category consists of states that do not require legislative approval for treaty ratification. This follows from conceptual distinctions found in Haftel and Thompson (2013) and empirical distinctions found in Simmons (2009). Many states require legislative approval before fully committing to treaty law. From the 173 states examined in Simmons (2009) data, 105 states required legislative approval for ratification while 68 did not.²⁸ Sierra Leone’s Constitution, for example, stipulates that treaty agreements are “subject to ratification by Parliament by an enactment of Parliament or by a resolution supported by the votes of not less than one- half the Members of Parliament.”²⁹ Other states, such as Australia, rest the power of ratification squarely on the executive. This ratification

²⁷ Algerian Constitution as amended in 1996: Part II, Chapter I, Article 77, 9
http://confinder.richmond.edu/admin/docs/local_algeria.pdf

²⁸ Simmons (2009) uses a 1 to 3 scale to code the level of domestic institutional hurdle in place for ratification, with 1 being the least and 3 being the highest. This graph adds categories 1 and 1.5 together to graph states that do not require legislative support and 2 and 3 together to graph states that do require legislative approval for ratification. Find Simmons (2009) data at http://scholar.harvard.edu/files/bsimmons/files/APP_3.2_Ratification_rules.pdf.

²⁹ Sierra Leone 1991 Constitution Article 40 (4) h.

power is granted by Article 61 of the Australian Constitution granting executive power for “the execution and maintenance of this Constitution, and of the laws of the Commonwealth.”³⁰

States with legislative requirements for ratification should opt for faster signature of treaties when they want to signal commitment to treaty law. The signature commitment action provides a way of signaling support prior to ratification approval from the legislature.

Examining signature along with ratification will help to explain the gap that occurs for some states between signature and ratification.

In this dissertation, I operationalize the concept of legislative involvement in treaty ratification by measuring whether or not domestic policy requires legislative approval for ratification. I utilize coding from Simmons (2009) Appendix 3.2 Ratification Rules. Simmons (2009) codes how states ratify treaties based on descriptions in national constitutions. Her coding uses the following scale:

1 = individual chief executive or cabinet decision

1.5 = rule or tradition of informing legislative body of signed treaties

2 = majority consent of one legislative body

3 = super-majority in one body or majority in two separate legislative bodies

4 = national plebiscite

For the purposes of this dissertation, I collapse the above coding scale into two categories based on the extent of legislative involvement. My first category captures states wherein legislative approval is not required for ratification. This concept comprises Simmons’ (2009) categories of 1 and 1.5. My second concept to operationalize is required legislative approval. Sixty-nine states fall into this category. This corresponds to Simmons’ categories of 2 and 3.

³⁰ Section 61 of the Australian Constitution.

One hundred four states fall into this category. None of the states included in coding were listed as category 4, a national plebiscite all of the time. Dividing the Simmons scale into two distinct categories of legislative involvement offers the conceptual advantage of refining how involvement of domestic processes influences ratification. It also offers the analytical advantage of measuring, graphing, and understanding how exactly the presence of legislative barriers matters versus the lack of barriers.

Understanding the domestic legal context from which states operate offers a deeper explanation of why, when, and how states commit to international law. There is significant variation in the timing and method of commitment to treaties that merits exploration. I expect that the domestic barriers to treaty ratification influence how and when a state commits. States requiring legislative approval of ratification will, in general, take longer to ratify and use signature as a means to signal support of the treaty issue area earlier than domestic barriers allow them to ratify. Alternatively, states without legislative requirements for ratification should ratify faster, but not need to signal commitment prior to ratification because the quick ratification itself serves as a signal.

Incorporation of International Law

A second point the legislature is involved with treaty law during implementation of international into domestic law. Two related issues influence how a state incorporates and implements international treaty law: 1) whether the state approaches international law as monist or dualist and 2) whether the treaty is self-executing.

Monist and Dualist Approaches to International Law

International human rights law guarantees states the right to choose how international treaty law is implemented domestically. While the ICCPR requires states to respect all individual rights found within the treaty, it allows implementation to fall to the discretion of national law. The ICCPR states that “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant” (Part II, Article 2, Paragraph 2). Although this core human rights treaty recognizes rights as universal it recognizes rights implementation as relative.

States differ in how they opt to incorporate international law. A marked difference in domestic legal treatment of international law is whether or not treaty law is automatically incorporated into domestic law upon treaty commitment. Primarily, this distinction has been characterized by legal scholarship as the divide between monist and dualist approaches. While political scientists have tended to focus on laws governing ratification, legal scholars have long written about the domestic legal divide between monism and dualism, which has more direct implications for international legal implementation. Sloss (2011) writes that it is important to appreciate the “functional differences among (monist and dualist) states,” which “hinges on the role of the legislature” (1). This distinction is useful to examine when thinking about the connection between domestic and international levels of law. According to this doctrine, monist states approach international and domestic law as singular systems, with international law often ranking as supreme. Alternatively, dualist states approach international law as decidedly separate from domestic law, with domestic law ranking as supreme. This distinction has

important consequences for how states approach, interpret, and implement international law into domestic law. The significance of an additional action requirement following treaty commitment to incorporate international law into domestic law is that the two levels of law were separate to begin with and needed extra actions to integrate them.

Monist states approach international and domestic law as part of a singular system. Both levels of law derive from an origin of “the law of nature which binds equally the state and individuals” (Verma 1998, 48). Once law is “accepted as true law, then there is no intrinsic difference between the two” (Verma 1998, 49). An early supporter of the monist approach, Kelson posited that international law is both above domestic law and state sovereignty. He pointed to the role of customary law and the notion that treaties can be valid “even when the will of the parties to be bound by treaties has vanished” (Stern 1936, 737). Jackson (1992) supports this position, positing that “It should be quickly noted that even if a treaty norm does not prevail as a matter of domestic law, it will likely still be ‘in force’ as a matter of international legal obligation” (313). Kelson’s view of the eventuality of the centralization of international legal order was, at the time, viewed as hypothetical (Stern 1936, 738). Since Kelson’s original writings in the 1930s, the United Nations system was created and offered the most centralized international legal order to date.

Following from monism is the Delegation Theory, which maintains that “there is no transformation of a rule of international law when it is adopted by the legislative machinery of the State” (Verma 1998, 51). Rather, the single process of legal integration is the action of state acceptance of international law at the international level. Constitutional requirements are part of one singular process in committing to the treaty or convention (Shearer 1994, 67).

An example of monism articulated in state law can be seen in Article 151 in the Egyptian Constitution: “The President of the Republic shall represent the State in its foreign relations and conclude treaties and ratify them after the approval of the House of Representatives.” The new 2012 constitution gives supremacy to international law over domestic law. Article 93 reads that “The state is committed to the agreements, covenants, and international conventions of human rights that were ratified by Egypt. They have the force of law after publication in accordance with the specified circumstances.” While some question the extent to which the judiciary interprets international law in domestic situations (Suto 2014), the law on the books in Egypt approaches international law in the monist tradition and is praised by others for its “significant improvements” over the earlier constitutions in its coverages of international human rights agreements (Fahum and Sheikj 2013).

Dualist states approach international and domestic law as two different and separate systems of law. The laws “operate at different levels, have different subjects, and operate different matters” (Boczek 2005, 6). For international law to take legal effect, it must “be specifically adopted into the municipal system...and applied there not as international law but as part of the domestic system” (Boczek 2005, 6). Anzilotti explained the difference between international and domestic law in that a state’s domestic law should be obeyed, whereas international law followed from the principle of *pacta sunt servanda* states observing the law in good faith.

Following from the principals of dualism, the Transformation or Specific Adoption Theory assumes that international and domestic laws are separate and distinct. To incorporate international law into the domestic system, the law must “undergo the process of transformation and be specifically adopted by, or incorporated into the State law” (Verma 1998, 51).

Transformation Theory calls for the incorporation of international law to be a step further than forma with a more “substantive requirement, and that alone validates the extension to individuals of the rules laid down in treaties” (Halashetti 2011).

An example of dualism articulated in state law is found in Australia. International law must be incorporated into Australian domestic law through legislation. Section 51 (xxix) of the Australian Constitution grants the Parliament power to “make laws for the peace order, and good government of the Commonwealth with respect to . . . external affairs.” This means that even though the Australian head of state can ratify treaties, the terms of the treaties cannot be fully enacted without the support of the legislature, creating new expansionary domestic law to ensure that domestic law reflects international law. As Gareth Evans, the Minister for Foreign Affairs in Australia stated, “Despite Assertions from the radical right, a treaty is not an edict issuing forth from some unelected and unrepresentative world body and imposed on unwilling nation states....The rights and obligations contained in a treaty do not become binding rights and obligations under Australian law unless and until specific legislation is passed implementing.”³¹

Legal scholars have long pointed to the differences found in the monist and dualist approaches as important for understanding state behavior towards international law. Some of the theoretical and practical differences between the two positions were discussed above. Largely, scholarship has not examined the implications of the differing approaches to international law on timing of ratification or levels of compliance.

³¹ Keynote Address by Senator the Hon Gareth Evans QC, Minister for Foreign Affairs, to the International Treaties Conference, Canberra, September 4 1995 accessed at <http://australianpolitics.com/1995/09/04/international-treaties-their-impact-on-australia.html>.

Self-Executing and Non-Self-Executing Approaches to Treaties

Beyond the monism and dualism distinction, states can differentiate between self-executing and non-self-executing status of treaties and address the issue of supremacy separately. In some states, once a state commits to treaty law it becomes automatically incorporated in domestic laws. In these states, domestic law considers treaty law to be self-executing. In other states, treaty incorporation is not automatic upon commitment. These states consider treaty law as not self-executing. In these states, the legislature must pass additional measures to incorporate treaty law into domestic law. This distinction is similar to the monism/dualism debate, however increasingly treaties have self-executing status written into the text. This causes variation between state approaches to international law and limits within the treaty. More nuance exists when states change interpretations over time and make further distinctions between issues of self-execution and supremacy. For the purposes of this dissertation, I focus on the monist/dualist divide but will discuss issues of self-executing versus non-self-executing as they arise.

Measuring Legal Incorporation

Following from Sloss 2011, for the purposes of this dissertation I define dualist states as “states in which no treaties have the status of law in the domestic legal system; all treaties require implementing legislation to have domestic legal force. Monist states are states in which some treaties have the status of law in the domestic legal system, even in the absence of implementing legislation” (1-2). This definition recognizes that monist states, at times require legislative action for certain international treaties, but in general follow the principle that

international law is superior to domestic law and, in general, does not require additional actions to incorporate.

Requiring the legislature to take additional action to incorporate treaty law changes how states approach international law. While dualist states, or those approaching international law as not-self executing, require more time and legislative involvement, dualist or states that do view international law as self-executing have higher stakes in treaty commitment. For a state without legislative incorporative requirements, treaty commitment is tantamount to altering its domestic law. A dualist state is legally bound both internationally and domestically to the terms of the agreement upon ratification, or treaty actions of similar binding nature.

Domestic laws affect how states commit to international law. As discussed above, ratification is more difficult in states requiring legislative approval. In states that consider international law supreme to domestic law, commitment becomes a more meaningful action as it automatically alters domestic law. Given these distinctions, we can draw expectations of state legal behavior based on the implementation characteristics of both state and treaty. When a state views international law as supreme and a treaty is self-executing, then states will have the greatest stake in treaty commitment because the law will immediately and supremely come into effect.³² When a state views domestic law as supreme and non-self-executing, then the state will have less of a stake in commitment actions. In this state, the domestic legislature must implement the treaty law and any pre-existing domestic law supersedes the treaty.

³² Time of treaty entry into force can vary, when the treaty specifies an exact time of entering into force.

Legislative Involvement at the Ratification and Incorporation Stages

The previous sections discussed how legislative involvement varied at the ratification and incorporation stages. This sub-section introduces a two by two table depicting the combinations of legislative involvement present in states. Table 2 codes example states as they fall on the dichotomous measure of legislative involvement at the ratification stage – whether or not legislative approval is required for ratification- and at the incorporation stage – whether or not a state identifies as monist or dualist. Throughout the dissertation I posit that not only the extent of legislative involvement, but also the timing of legislative action is important to understand international legal engagement with treaty law.

Table 4: Dimensions of Legislative Involvement and Example States

	Legislative Approval Required for Ratification	No Legislative Approval Required for Ratification
Monist (some IL are incorporated)	Netherlands France Chile Japan Russia Mexico	China -1950s Egypt- not with human rights
Dualist (legislation required for incorporation of IL)	United States - in practice United Kingdom Israel Nigeria	Canada Australia India

It is important to note that for all states surveyed, the legislature was legally required to become involved at either the ratification or incorporation stage. In other words, this author could not find a state that offered an example of treaty processes wherein an executive could ratify without legislative approval and international human rights law was directly incorporated

without legislative action. The apparent lack of a true example to fit the fourth box is reflexive of the growing role of domestic legislatures and of the controversial areas of rights and regulations that the human rights issue area touches on. Two states offered qualified examples of states to fit in the fourth box, with no legislative involvement required for ratification or incorporation of treaty law.

China offered the closest example of fitting into the monist/no-legislative approval box around the 1950s. However, this is no longer the case. In the current constitution, the President no longer explicitly has the power to ratify international law as an external representation of the PRC, as the president explicitly did in the Constitution of 1954 (Ahl 2009, 357). Similarly, China once had a monist approach to international law, but since the 1990s has “largely abandoned” this interpretation (359). Increasingly and across the globe, in the time of the United Nations human rights convention, every state requires legislative involvement at some point, so the timing and combination of legislative involvement becomes important in understanding international legal behavior.

Similarly, Egypt offered a close example of a monist state, wherein some international laws are directly incorporated into domestic law without enacted statutes and wherein the executive could ratify treaty law without legislative approval. However, in approaching the human rights issue area of international law, Shari’a law, “the driving force of the Egyptian legal tradition” presents many conflicts internalizing international law from international treaty into domestic law (Zartner 2014, 151). This has led to the executive readily ratifying international human rights treaties but resistance from both the legislature and judiciary in implementing human rights norms domestically. Although broadly monist in that some international laws directly are incorporated into domestic law, in the human rights issue area, this is not

consistently the case. Zartner 2014 writes about lack of integration of international into domestic law in Egypt. “As Egypt has long been a mixed monist-dualist state, treaties that potentially conflict with Shari’a do not become effective in Egyptian domestic law until they are officially internalized” (Zartner 2014, 146). In other areas such as environmental treaties or bilateral investment treaties, Egypt favors international law over domestic legal requirements (Kreindler 2010, 137).

Motives for Signing and Ratifying

Thus far, scholars have examined the point of ratification as the point of compliance and much of the literature has focused on the strategic motivations for ratification. Doing so, however, overlooks state behavioral changes that can occur after signature leading up to ratification. There are several possible behavioral patterns leading up to ratification that are consistent with existing null or negative findings of the relationship between ratification and improved rights. In this section, I situate Simmons (2009) categorization of governments’ ratification within my argument. I do not argue that ratification will always have a positive relationship on human rights behavior. Nor do I argue that strategic and material motives are removed from state commitment to international human rights law. However, there are times signature and ratification are both positive indicators of human rights behavior. In this dissertation, I highlight a possible pathway for sincere committers.

Table 5: Range of Possible Motives for Signing and Ratifying

State Groups	Motivation	Expected outcome
Sincere Committers	Commitment to human rights Respect for international law	Improved rights
Strategic Committers	Reputational gains	No change
Ratification to Compensate	Compensate for poor rights records when government strives for better practices	Improved rights over time

Sincere Committers

If signature is an easier commitment route for states to navigate and it allows for the signaling of human rights commitment, why do states ultimately ratify? I posit that states ratify treaty law to cement their human rights positions domestically and to solidify their reputation as a “good human rights state.” This cementing practice coincides with Simmons’ (2009) discussion of governments that ratify as sincere ratifiers. As mentioned previously, NGOs and other actors still push states to ratify human rights treaties and do not reward states for only signing them. When states that have signed a human rights treaty and think there is enough domestic support to ratify, they will introduce the treaty ratification vote into the legislature. By the time states garner the domestic support required for ratification, the state will already have made the changes it is willing to change to their practices. The average time between signature and ratification of the ICCPR for states that made both commitment actions was 7 years.³³ As a

³³Shortest amount of time between signature and ratification of ICCPR was less than 1 year and longest amount of time was 37 years.

result, we should expect a positive relationship between signature and human rights levels and little or no impact between ratification and human rights levels.

Rather than ratifying as an initial means to signal commitment to and support of the rights outlined within international human rights treaties, I suggest that states ratify to cement their rights positions domestically and to solidify their reputation internationally. Signing satisfies fewer actors than ratification and therefore offers states less of an opportunity for reputational gains. While states receive some reputational boost from signing, signing alone leaves many groups wanting more.³⁴ Following signature, states receive pressure from numerous levels to finalize their legal commitment.

Strategic Committers

Human Rights NGOs do not view signature as a desirable legal end-goal. Because it is not a binding legal commitment to a treaty, activists push for full commitment through ratification. NGOs, for example, organize their campaigns around ratification. For example, in discussing women's rights, Amnesty International describes their goal as "We work to advance U.S. ratification of the Convention to Eliminate All Forms of Discrimination against Women (CEDAW), an international treaty ratified by most countries, to enshrine a universal approach to women's rights." Similarly, Human Rights Watch wrote of Pakistan, "Ratifying the Convention against Disappearances is a key test for Prime Minister Nawaz Sharif's new government....The government would send a clear political message that it's serious about ending 'disappearances'. And it would show its commitment to ensuring justice for serious human rights violations." The

³⁴ States participate in a signing ceremony at the United Nations. The United Nations holds an annual event to promote treaty participation. At the 2013 event alone, 59 states participated through making 113 treaty actions including 60 signatures, 29 ratifications, and 12 accessions.³⁴ Treaty signing ceremonies signal commitment to the treaty.

assumption articulated in these statements is that ratification is the pinnacle of commitment and is the end goal that activists and politicians alike should aim for.

Acquiescing to NGO and international pressure, some states ratify with no intention of altering rights practices. This group of states is what Simmons (2009) labels strategic ratifiers: “These governments trade off the short-term certainty of positive ratification benefits against the long-run and uncertain risk that they may face compliance costs in the future” (58). Ratification, instead, is a means for states to reap recognition from international human rights NGOs and other actors. This argument is related to, but not identical, to the existing arguments found within international relations and law literature that explain ratification actions as merely acts towards the end goal of reputational gains. Hathaway (2002), for example, argues that states that ratify human rights treaties receive “expressive” benefits and “rewards ‘for positions rather than for effects’” (2007). These benefits, Hathaway (2002) posits, are enjoyed by all states that ratify based on visibly joining the treaty, rather than for compliance with the treaty. Related to this reputational gains argument, I propose that states do ratify to be rewarded with recognition from other states and NGOs while covering existing rights violations.

However, I posit that states with domestic legislative barriers to ratification will have already sincerely signed the human rights treaties – with intent to comply – before seeking broader recognition for their commitment through treaty ratification. Similar to the existing arguments, I expect that ratifying treaties will have little or no effect on the observable rights behavior (compliance) of ratification barrier states. This is not because of wide-sleeping deceptiveness or malicious intent. Of course, I do not argue that deception and strategic commitment does not occur. I do argue, however, that strategic commitment is not the rule.

Rather, as discussed above, I argue that in general, more states simply already have shifted their rights behavior prior to cementing their commitment through ratification.

Ratification to Compensate

Some states, for multiple reasons, engage in human rights violations after having good intentions of improving rights when they signed. Ratifying for these states is timed with worse domestic rights practices, but the ratification serves as a signal and commitment to improve future rights practices. This group of states falls somewhere between Simmons' sincere ratifiers group and the managerial school approach exemplified by Chayes and Chayes (1993). Despite good intentions and a commitment to the ideals found in international human rights law, these states cannot and/or do not alter rights behavior and ratify international law as a way to compensate for their poor practices.

I do not expect this relationship to hold for states without domestic legislative barriers to ratification. Without the same expectations of domestic delays to ratification, non-barrier states do not approach ratification as a means to cement already existing rights commitment. Based on differing motives, I expect that ratification should be associated with similar rights behavior. While barrier states have already changed their rights practices for the better following signature, non-barrier states are not confronted with similar domestic challenges.

Compliance Expectations

Compliance is a "state of conformity or identity between an actor's behavior and a specified rule" (Raustiala and Slaughter 2001, 539). Scholars have looked to many explanations for compliance with international law and increasingly look to domestic politics for explanatory

help. Examining domestic legislative involvement with treaty law is not only important in understanding state engagement with international law, but also for understanding how and when states comply with it. Taking the domestic factors discussed above into consideration, I posit that for more accurate measurement of treaty compliance we must take into account how states initially committed existing domestic legal policies that may inhibit or promote certain engagement types.

Domestic laws set states on differing paths to legal commitment with treaty law. States vary on the length of time required between signature and ratification actions, and this delay has important implications for observable compliance. I posit that states requiring legislative approval for ratification will opt to sign treaties early in the treaty process to signal their commitment. This allows states to commit prior to the lengthy and sometimes difficult process involved with legislative approval of ratification. This is an important implication of legislative requirements. Thus far, scholars have overlooked signature as a commitment action by which to measure compliance. However, I posit that for states with legislative barriers, this may be the most accurate commitment action from which to measure behavioral change. I posit that in states with legislative requirements for ratification, we will observe a larger change in compliance behavior before and after signature rather than ratification. By the time the state ratifies a treaty, it will have already shifted its practices and we will not observe a significant level of compliance.

Hypotheses

H1: IF a state has legislative barriers to treaty ratification, then it will signal support for treaties through signature earlier than states without barriers

H2: If a state has legislative barriers to treaty ratification, then changes in compliance behavior will happen after signature.

Conclusion

In this chapter, I introduced the argument that the extent and timing of legislative involvement in the treaty commitment and incorporation process has implications for state legal behavior at the international level. I discussed the ways that formal international treaty law allows states to advance their domestic laws, norms, and preferences and how the dynamic, precise, and formal characteristics facilitate state communication through international law.

Investigating the role of domestic legislative involvement in international law helps to explain some of the puzzling findings present in international legal scholarship. For example, numerous studies find a lack of connection between ratification and human rights practices, building the argument that states that commit to international law are less likely to comply. Looking closer into the role of domestic laws on commitment helps us to understand the timing of commitment and when to begin looking for behavior changes.

CHAPTER 3

Commitment Timing and Observable Compliance with the ICCPR and CEDAW

On April 22, 2016, 60 world leaders and representatives from over 170 countries assembled at the United Nations Headquarters in New York City. The occasion, convened by United Nations Secretary-General Ban Ki-moon, was the official, high-level signing ceremony of the Paris Climate Change Agreement.³⁵ The event was “entirely ceremonial, with schoolchildren and brass bands filling out the UN hall, and John Kerry, the (U.S.) secretary of state, toting his granddaughter in his arms when it came his turn to sign the agreement.”³⁶ News outlets filmed, photographed, and live-blogged the signing ceremony as states committed to the Agreement. At the close of the ceremony, 175 states committed to the Paris Climate Change Agreement through signature. Secretary-General Ban Ki-moon’s remarks at the signing ceremony captured the optimism and significance of the event. “...today is a day for our children and grandchildren and all generations to come....With their signatures today, governments have made a covenant with the future....Today’s signing is a vote of confidence in a new approach to climate change...”³⁷

The United Nations, states, and media all viewed the signing ceremony as important and cause for celebration. Although highly celebrated, the Paris Climate Change Agreement is by no means the only international agreement the United Nations recognized via a signature ceremony. The United Nations holds individual signing events for treaties, such as the opening for signature of the Optional Protocol to the Convention on the Rights of the Child on a communications

³⁵ <http://newsroom.unfccc.int/paris-agreement/april-22-paris-agreement-signing-ceremony-in-new-york/>

³⁶ <http://www.theguardian.com/environment/2016/apr/22/un-climate-change-signing-ceremony>

³⁷ Remarks by the United Nations Secretary-General Ban Ki-moon at the High-level Signature Ceremony for the Paris Agreement. 22 April 2016 <http://www.un.org/sustainabledevelopment/blog/2016/04/remarks-by-ban-ki-moon-at-paris-agreement-signing-ceremony/>

procedure on February 28 2012, when 20 states signed the Optional Protocol. The United Nations holds an annual treaty event encouraging universal participation and implementation and publicizes photographs of plenipotentiaries signing international agreements which are catalogued online and made accessible to the public. At the 2015 treaty event, the United Nations celebrated six signatures: the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict by Myanmar, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure by Lithuania, the Convention on the Rights of Persons with Disabilities by Belarus, and the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration by the Congo, Gabon, and Madagascar.³⁸ Five of the six signatures were toward human rights treaties.

Despite the celebratory tone and full attention paid to signature ceremonies at the United Nations, NGOs and scholars have largely overlooked the act of signing treaties. Instead, they focus on ratification as a measure of commitment and means to assess state treaty compliance. This is in part logical, as ratification is a binding legal action, which obligates a state to commit to treaty law, while signature is not. Human Rights Watch, for example, criticized China for signing the International Convention on Civil and Political Rights (ICCPR) in 1998 without, as of October 2013, ratifying it.³⁹ Rather, NGOs push for ratification. To them, signature is not in and of itself a goal for commitment nor an action to celebrate.

Previous scholarly findings paint a bleak picture of compliance with human rights treaties. Ratification is rarely associated with better human rights. Some studies even find that ratification can be associated with worse practices.⁴⁰ However, some research suggests that states enter into

³⁸ United Nations. 2015. 2015 Treaty Event: Seventy years of multilateral treaty making at the United Nations: Final Report. Accessed at https://treaties.un.org/doc/source/events/2015/final_report-2015.pdf

³⁹ <http://www.hrw.org/news/2013/10/08/china-ratify-key-international-human-rights-treaty>

⁴⁰ Hathaway 2002.

agreements with good intentions that carry over to compliance practices.⁴¹ Examining only ratification as a commitment action leaves us with an unclear picture of the relationship between treaty commitment and compliance behavior and no real understanding of how states with domestic ratification barriers approach international law prior to ratification.

The existing literature has only used ratification as a measure of commitment to test compliance with human rights treaties. This limited focus is problematic for understanding the relationship between commitment and compliance for several reasons: 1) Focusing on ratification excludes the analysis of non-binding commitment; 2) In focusing only on ratification, existing literature discounts the complex domestic processes required before ratification occurs; and 3) Examining only ratification contributes to overlooking the gap in time between signature and ratification commitment as a period of potential change in state behavior.

In this chapter, I begin to look at the implications of ratification barriers on compliance and in doing so look beyond the action of ratification by examining the other types of commitment actions. What does it mean for compliance when signature and other commitment actions are included in analysis? Including these actions allows me to explore whether states treat all commitment actions similarly. While previous studies uncover a bleak picture of the relationship between ratification and compliance, I find that considering the role of domestic ratification barriers and including commitment actions reveals a more optimistic one.

I argue that domestic law governing the requirements for ratification is important in explaining when and how a state commits to treaty law. The timing and extent of domestic legislative involvement in ratification limits how and to what extent an executive can commit to international treaty law. States without legislative approval requirements can ratify sooner, while

⁴¹ E.g. Chayes and Chayes 1993 and 1998.

states with barriers are delayed in legal action. This delay has important implications for state levels of observable compliance.

Signing offers states an option for sincere commitment earlier in the treaty process than ratification, an act that generally requires extensive domestic approval. While often undervalued in scholarship and policy, the action of signature offers a route for states that want to signal support before navigating domestic procedures often required for ratification. To ratify a treaty, most states must gain approval from the national parliament, while signing often requires only executive approval. I posit that by the time a state with ratification barriers does ratify a treaty, often years after signing, it will have already adjusted its practices based on its signature action. This relationship between actions and compliance helps to explain why ratification can be associated with no change in compliance behavior. States with ratification barriers use signature to commit, but use ratification to cement their rights positions later on. I argue that variation in the role of the domestic legislature in the ratification process not only influences timing of commitment to human rights treaties, but also influences the timing of observable compliance. Scholars have begun to explore the relationship between domestic ratification procedures and ratification delay, but have yet to examine the implications on compliance.

I find that signature actions matter for compliance for states with domestic barriers to treaty ratification. As expected, signature is associated with better rights practices, while ratification is not. This finding generally supports the expectations of optimistic scholarship while explaining the pessimistic results often found when testing compliance via ratification. Support for my argument bridges together both sides of the divide on commitment and compliance. States can and do enter into human rights agreements sincerely when they sign, but by the time they ratify, we expect to observe little or no change in compliance behavior.

I begin this chapter by linking the theoretical argument presented in Chapter 2 about domestic legislative involvement in the treaty process to commitment actions. I argue that states sign to sincerely commit to human rights law and ratify to cement their rights positions. Next, I examine the descriptive characteristics of states with domestic legislative barriers to treaty ratification – who are these states? Following this description, I examine the differences in time it takes barrier and non-barrier states to commit to international human rights treaties. Building from these descriptions, I shift the focus of the chapter to ask whether the presence of domestic barriers to ratification matters in terms of treaty compliance. In this part of the chapter, I quantitatively test the role of commitment actions in determining rights practices. Focusing on the International Covenant for Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) I use ordered logit regressions to statistically analyze the effect of the different types of commitment actions on rights levels. I conclude by discussing the implications of the findings and possible future research directions.

Describing Barrier States

Before analyzing the implications of domestic ratification barriers on timing of ratification and observable compliance levels, it is important to first take a descriptive look at states' ratification practices. What types of states have domestic ratification barriers in place? Are there any discernable trends explaining what states have domestic legislative ratification barriers? This section offers a description of domestic ratification barriers found globally.

The presence of domestic legal barriers to ratification notably distinguishes treaty commitment behavior from states without legal barriers to ratification. Drawing from Simmons'

(2009) research on ratification barriers⁴², I divide states into two categories. In the first category, domestic law does not require legislative approval for treaty ratification, or similar legal binding actions.⁴³ As Figure 2 shows, there are 68 states in this category. The second category is comprised of states that do formally require legislative approval for treaty ratification, or similar legally binding actions.⁴⁴ There are 105 states in this category. While Simmons (2009) briefly examines the role of domestic ratification barriers on ratification rates, she does not examine how domestic barriers influence overall treaty commitment. In addition, Simmons only examines “Ratification barriers in democracies” as it explains rate of treaty ratification.⁴⁵ Simmons’ (2009) findings point to a difference in overall legal system, common law vs. civil law, as explaining differences in ratification rates. However, given the variation in domestic barriers to ratification, this area merits further exploration.

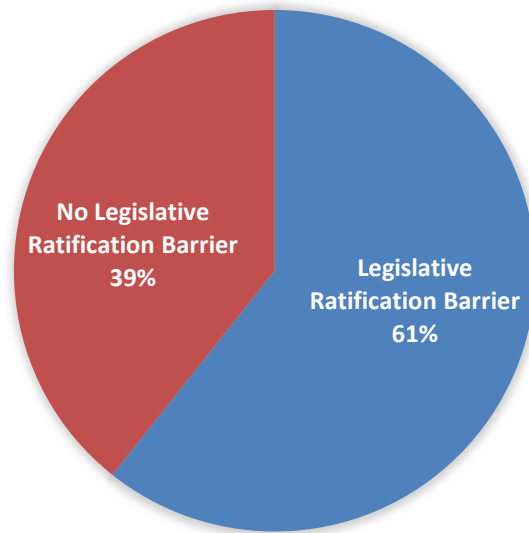
⁴² See Appendix 3.2 “Ratification Rules” at http://scholar.harvard.edu/files/bsimmons/files/APP_3.2_Ratification_rules.pdf

⁴³ This corresponds to adding categories 1 and 1.5 from the Simmons coding.

⁴⁴ This corresponds to adding categories 2 and 3 from the Simmons coding.

⁴⁵ See Simmons 2009 pg. 83 Table 3. “Influences on the Rate of Treaty Ratification”

FIGURE 2: STATES BY RATIFICATION BARRIER



A Descriptive Examination of Ratification Barrier States

A possible critique of analyzing the role of domestic legislative ratification barriers as they relate to international legal activity and compliance levels is that Western democracies dominate that category. If Western democracies were the dominant states with ratification barriers then it could be difficult to tease out independent effects of ratification barriers versus regime type and location. In this section, I take a closer descriptive look at what states have ratification barriers. Through this examination, I show that western democracies simply do not dominate the category of states with legislative barriers to treaty ratification.

First, I breakdown barrier and non-barrier states by region. Figures 3 and 4 show the breakdown of states by United Nations Regional Group. For regional grouping, I use the United Nations specified regional groups of member states. Using this source for grouping provides the advantage of categorizing states by both how a state recognizes itself and how the international community categorizes it. Each state must become a member of a regional group and the United

Nations subsequently must confirm the membership. The complete listing of United Nations Regional Groups can be found online.⁴⁶

Figure 3 depicts the regional breakdown of states without domestic legislative barriers to international treaty ratification. The largest regional group making up the non-barrier states is the African Group, with 26 out of the 69 states. Figure 4 depicts the breakdown of states with domestic legislative barriers to international treaty ratification. The African Group also comprises the largest category of barrier states, with 25 member states categorized as having legislative barriers to ratification. The primary difference in the two categories of barrier and non-barrier states in terms of regional breakdown is that barrier-states included more states from the Western Europe and Others Group as well as the Eastern European Group. The legislative barrier state category was not dominated by the Western Europe and Other Group, however. As Figure 3 shows, states with legislative barriers were fairly evenly distributed globally. Between the five regional groups, the count of states ranged between 18, the lowest as the Latin American and Caribbean Group, to 25, the highest count from the African Group. Figure 3 depicts a bit more variation across regions in regard to states without legislative barriers. The regional group with the highest amount of states was the African Group with 26 states. The lowest amount of states without legislative barriers was the Eastern European Group, with only 2 states categorized as not having legislative barriers to international treaty ratification.

⁴⁶ <http://www.un.org/depts/DGACM/RegionalGroups.shtml>

FIGURE 3: STATES WITHOUT LEGISLATIVE BARRIERS TO
TREATY RATIFICATION BY REGION

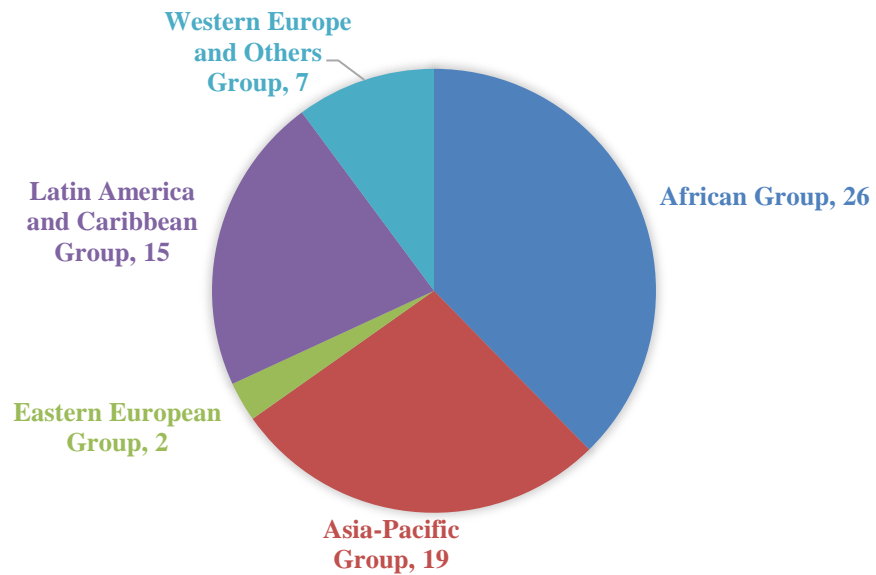
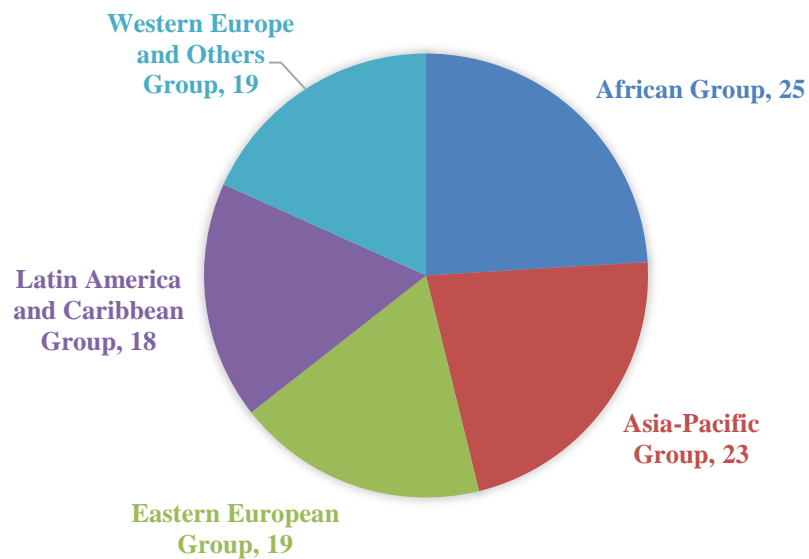


FIGURE 4: STATES WITH LEGISLATIVE BARRIERS TO
TREATY RATIFICATION BY REGION



Next, I analyze barrier and non-barrier states by regime type. A possible critique of emphasizing the importance of domestic legislative involvement with ratification is that this measure would in essence be measuring regime type, that democratic states would be comprising the bulk of states with legislative barriers. The following graphs break down barrier and non-barrier states by level of democracy. Following from a wide usage and acceptance within political science scholarship, I use Polity IV data to measure democracy. States with a score of 6 or greater are considered democracies and states with scores less than 6 are considered non-democracies. The following graphs include data from 165 states, those states for which data on ratification barriers and polity existed.

Figures 5 and 6 depict the regime type breakdown of states with legislative barriers to ratification in 2010. A global trend towards democratization heightened between the 1970s and 1990s during the Third Wave of democratization across Latin America and Eastern Europe (Huntington 1991, 21-25). Anticipating critiques about the dominance of democracies as states with legislative barriers, I feature 2010 in the graphs, the most recent year of analysis in this dissertation. Based on the global trend of states transitioning towards democracy, most recent year would provide the breakdown with the most democracies present. The figures do depict a prominence of democracies in the category of barrier states. Democracies comprised approximately two thirds of the states with legislative barriers to treaty ratification. Alternatively, democracies comprised less than half of the states without legislative barriers to treaty ratification.

Taken together, the descriptive analysis of barrier and non-barrier states by region and regime type tell us important information about states. States with legislative barrier to treaty ratification came from a variety of regions, with no clear dominant region comprising the

majority of barrier states. However, approximately two-thirds of barrier states were democratic in 2010. These descriptors tell us that although barrier states are a varied mix of states, it is important to tease out the distinct role of domestic legislative barriers to ratification from state regime type. In the statistical analysis later in this chapter and throughout the dissertation, I control for regime type to isolate a distinct role that legislative barriers to ratification play on state behavior.

FIGURE 5: STATES WITHOUT LEGISLATIVE BARRIERS TO RATIFICATION BY REGIME TYPE

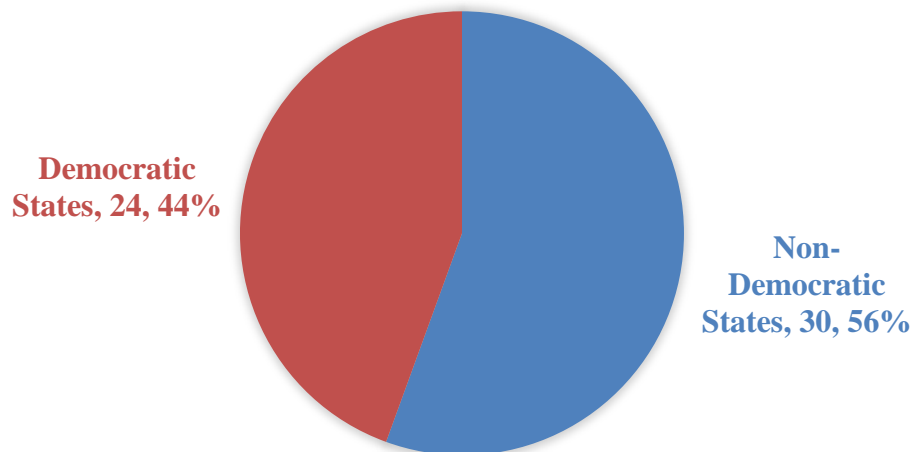
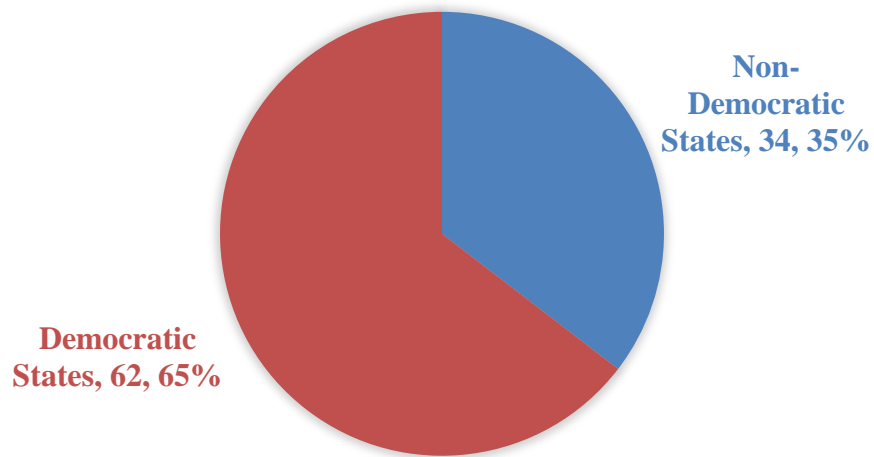


FIGURE 6: STATES WITH LEGISLATIVE BARRIERS TO RATIFICATION BY REGIME TYPE



Ratification Barriers and Ratification Timing

The previous section examined the characteristics of states with domestic legislative barriers to treaty ratification versus states without barriers in place. In this section, I build upon this examination by describing the timing of treaty commitment in barrier states versus states without barriers to ratification. Throughout this analysis, and the rest of the analysis in the chapter, I focus on the two treaties CEDAW and the ICCPR.

In Figures 7 and 8, I document the timing of state commitment actions to the ICCPR and CEDAW. Across three measures, the number of years between signing and opening, the number of years between ratifying and opening, and the time between signing and ratifying I graph the difference in timing of actions between states with legislative barriers for ratification versus states without barriers. Figure 7 depicts the relationship between domestic ratification barriers and commitment actions pertaining to the UN CEDAW. CEDAW opened for signature in 1980. The data included in the graph incorporates commitment actions taking place between 1980 and

2010. States with ratification barriers signed and ratified earlier than their non-barrier state counterparts. Analyzing these numbers helps to test the hypotheses concerning timing of treaty commitment: Figure 8 depicts the relationship between commitment actions and ratification barriers as they pertain to the UN ICCPR treaty. The ICCPR treaty opened for signature in 1966. Figure 12 includes commitment action data from 1966 to 2010.

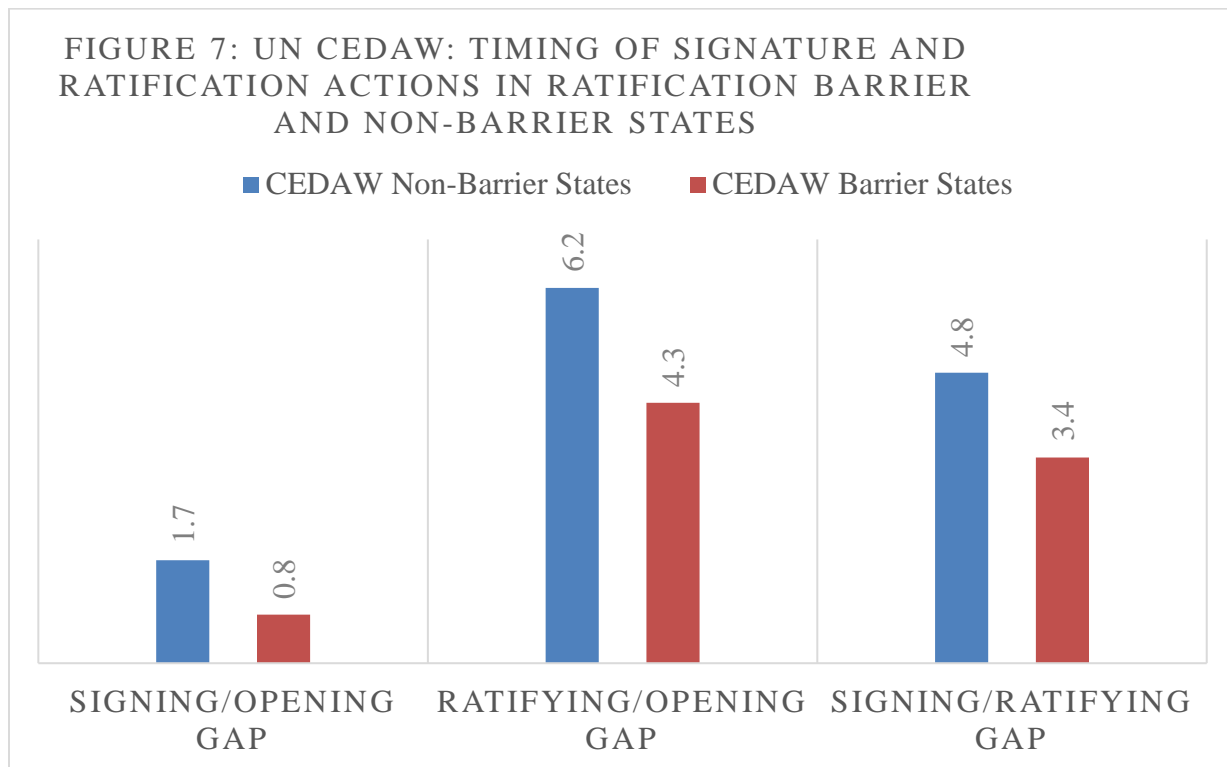
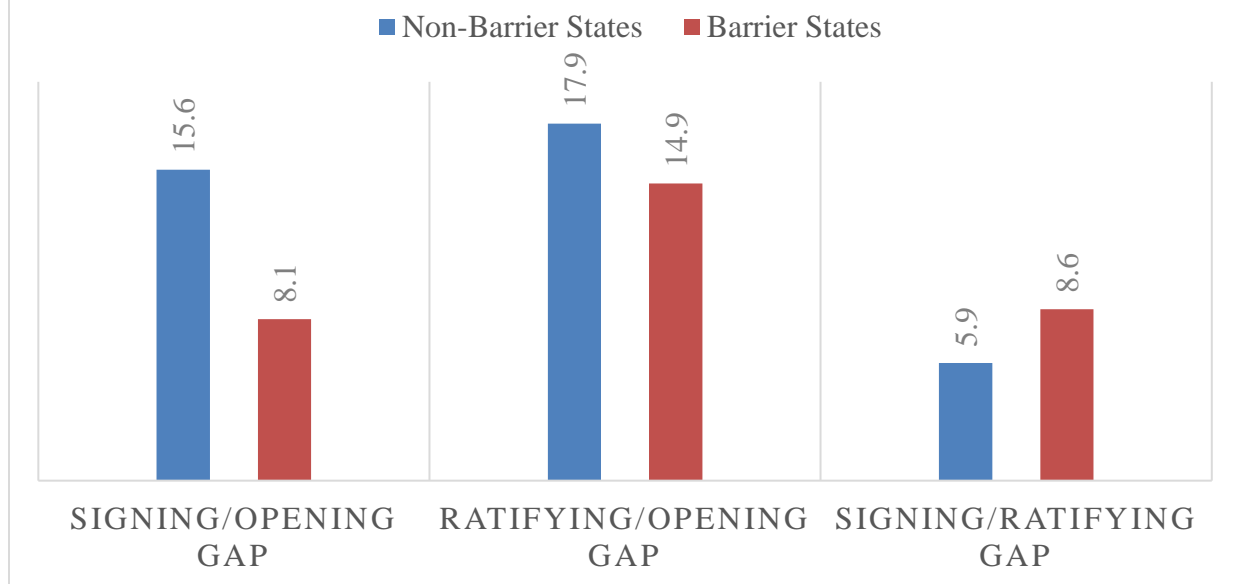


FIGURE 8: UN ICCPR: TIMING OF SIGNATURE AND RATIFICATION ACTIONS IN RATIFICATION BARRIER AND NON-BARRIER STATES



Across both the CEDAW and ICCPR treaties, states with domestic legislative barriers to international treaty ratification signed earlier than states without such barriers. This descriptive data supports Hypothesis 1. Concerning CEDAW, non-barrier states, on average took 2.1 times longer to sign. Non-barrier states, on average, took 1.9 times longer to sign the ICCPR. These findings lend support for the hypothesis that states with barriers are more likely to sign treaties earlier. Earlier action was especially evident when looking at the signing and opening gap pertaining to the ICCPR, found in Figure 8. Barrier states signed the treaty almost 8 years, on average, sooner after treaty opening than did non-barrier states.

Counter to expectations drawn from existing literature states with barriers to treaty ratification actually ratified sooner than states without legislative barriers. Despite domestic barriers, ratification-barrier-states actually took action ratifying ICCPR and CEDAW sooner than non-barrier states. For example, Haftel and Thompson (2013) find that under some circumstances, states with domestic legislative hurdles to ratification have an increase in time

between signature and ratification of bilateral investment treaties. Non-barrier states took, on average, 1.4 times longer to ratify the CEDAW and 1.2 times longer to ratify ICCPR. The only category that reversed the timing relationship was the gap between signing and ratifying the ICCPR. Barrier states took .7 times longer between the two actions than did non-barrier states.

There was no real difference in timing of accession and succession commitment actions. Concerning the CEDAW, non-barrier states took, on average, 11.8 years compared with barrier states taking, on average, 12.1 years to accede following EIF. This finding is as expected, as these actions operate independently from legislative constraints. Rather than being bound, or not, by legislative ratification barriers following treaty opening, accession and succession both operate under unique timing constraints. Accession action is only allowed, for most treaties, following formal entry into force (EIF). Following EIF, state executives often can commit through accession whenever politically feasible.

The Take Away

In this section, I presented graphs detailing the ratification and signature timing of both non-barrier and barrier states to the ICCPR and CEDAW human rights treaties. States with legislative barriers did not necessarily delay ratification – however they did signal earlier support through early signature of international treaty law, which I argue is a means to signal commitment in anticipation of potential delays associated with legislative requirements for ratification. With respect to the ICCPR, barrier states did have more years between signing and ratifying the treaty than did non-barrier states. This differs from the ratification gap found with the CEDAW treaty, wherein barrier states took fewer years in-between signing and ratifying than did non-barrier states. Overall, these graphs depict that states with domestic legislative barriers

to ratification commit earlier to treaties than states without barriers. In the next sections, I argue that this commitment timing has significant implications on how behavioral changes in rights practices are measured and observed in terms of treaty compliance.

Ratification Barriers, Types of Commitment, and Compliance

In this section, I continue building on the analysis of the role of domestic legislative barriers to ratification in state behavior. While the previous section analyzed the role of barriers on ratification timing, this section delves into the role that barriers play on compliance with treaties. I use the ICCPR and CEDAW to test the effect of commitment actions on compliance. Focusing on these treaties offers several advantages. The ICCPR treaty is widely supported, a core international human rights treaties that covers human rights broadly, and there is existing scholarship focusing on the ICCPR that enables comparison. The ICCPR opened for signature in 1966. Since then, the treaty garnered wide support with 74 signatories and 167 parties.⁴⁷ Parties to United Nations treaties are defined as states that has followed domestic approval procedures to commit to the treaty in a way that legally binds the state to provisions in the treaty.⁴⁸ The treaty covers a wide range of civil and political human rights, with rights ranging from the right to privacy to the right to freedom from torture.⁴⁹ Along with the Universal Declaration of Human Rights and the Covenant on Economic, Social, and Cultural Rights, the ICCPR constitutes the International Bill of Human Rights.⁵⁰ As one of the most important and prominent human rights

⁴⁷ As of January 13, 2014 according to the United Nations Treaty Collection at

https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&lang=en

⁴⁸ UNICEF. Introduction to the Convention on the Rights of the Child: Definition of Key Terms. Accessed at <http://www.unicef.org/french/crc/files/Definitions.pdf>

⁴⁹ Articles 17 and 7

⁵⁰ <https://www.aclu.org/human-rights/faq-covenant-civil-political-rights-iccpr>

treaties, the ICCPR has also been the focus of rigorous political science research.⁵¹ Because of its place in human rights law history and the ability to compare with prior analysis, the ICCPR offers a good treaty to begin analysis of the role of commitment actions on compliance levels.

To test the role of commitment actions on compliance with the ICCPR, I examine the years 1977-2006. This time captures most of the period that ICCPR has been in effect and allows me to include important independent variables such as INGOs⁵² and the dependent variables from Freedom House,⁵³ without interpolating to extend the data to years beyond the existing data.

Examining CEDAW offers the advantage of looking at how states commit to and comply with a more recent treaty pertaining to the specific rights of a minority group. While the ICCPR is viewed as an all-encompassing human rights treaty, the CEDAW specifies its intent to protecting women. CEDAW opened for signature March 1 1980 and has since been signed by 99 states and 188 state parties to the treaty.⁵⁴ I examine the years 1981-2006 when testing the role of commitment actions on compliance with CEDAW.

I separate out states with domestic legislative barriers to ratification from states without barriers to observe any unique patterns of behavior between the groups. In particular, distinguishing states by barrier status allows me to statistically analyze the unique effect of signature on human rights behavior.

Dependent Variables

⁵¹ See for example Camp Keith 1999, Simmons 2009, Lupu 2013.

⁵² Existing available data from Simmons 2009 is 1977-2006

⁵³ Political Rights and Civil Rights variables from Freedom House begin in 1973.

⁵⁴ As of May 22, 2014 according to the United Nations Treaty Collection at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en

Political and Civil Rights

Measuring compliance with human rights law is notably fraught with both conceptual and practical problems. To measure treaty compliance, I use Freedom House Political Rights and Civil Liberties measures to test compliance with the ICCPR. These measures, as many other human rights measures, suffer from the problem of missing information and selection bias. Only reported rights are included, when many human rights violations are not reported. The Freedom House measures, in particular, are blunt measures of human rights. However, their broad nature is advantageous when examining a treaty like the ICCPR that has a broad scope of human rights it covers.

The Political Rights and Civil Liberty variables both consist of a scale of 1 to 7 with 1 as the highest level of rights and 7 the lowest. Freedom House describes a 1 on the Political Rights scale as a state that enjoy “a wide range of political rights, including free and fair elections” while a score of 7 represents states that have “few or no political rights because of severe government oppression.” A score of 1 on the Civil Liberties scale describes states that enjoy a “wide range of civil liberties including freedom of expression, assembly, association, education, and religion...a generally fair system of the rule of law.” A score of 7 denotes a state that allows “virtually no freedom of expression or association, do not protect the rights of detainees and prisoners, and often control or dominate most economic activity.”⁵⁵

Women's Rights

⁵⁵ Freedom in the World 2016 Frequently Asked Questions found at https://freedomhouse.org/sites/default/files/Freedom%20in%20the%20World%20FAQs%202016_0.pdf

The issue of women's rights is a complex and multifaceted one. To measure women's rights, I include three rights variables from the Cingranelli and Richards (CIRI) Human Rights Database. These variables measure three facets of broader women's rights: economic rights, political rights, and social rights. As the CEDAW treaty covers multiple components of women's rights, it is worthwhile to include various types as dependent variables in analysis to fully examine the role of commitment and other variables in explaining women's rights levels. The variable women's economic rights includes consideration of factors such as equal pay, non-discrimination, and right to employment without a male relative's consent. This variable is coded 0, no economic rights for women, to 3, indicating full recognition of women's economic rights. The variable women's political rights includes consideration of the right to vote, run for office, and join political parties. This variable is coded 0, no recognition of women's political rights, to 3, full recognition of rights. Finally, the variable women's social rights includes consideration of numerous factors including the right to travel abroad, initiate divorce, equal inheritance, an education, and freedom to own property. This variable is coded 0, indicating no recognition of social rights for women, to 3, full recognition of social rights for women.

Independent Variables

I include the commitment actions of signature, ratification, accession, and succession. Each action is coded as 1, the year a state makes it, and 1, every year thereafter. I collected this data from the United Nations Treaty Collection.

To control for general state capabilities and characteristics, I include several variables. From the Polity IV database, I include the polity2 measure to capture a state's democracy level. This variable ranges from -10 to 10 with the least democratic observations at -10 and highest

level of democracy at 10. I also include the durability variable from the Polity IV database. This variable is a count of the number of years that a state has had a stable regime in place.

Gross domestic product is measured in U.S. 2000 dollar and is taken from UNDATA. It is important to control for economic capabilities determining compliance levels as some authors posit that state non-compliance of treaty law is based on adjustment periods and the inability of some states to implement changes based on limited funds. Economic capabilities could also limit how much funding is available for the state government to spend on institutions and personnel to handle issues of international law. Controlling for GDP allows the model to control for the possibility that level of economic capabilities of a state may be driving its focus and engagement with international law as well as its capability to comply.

Similarly, a state's population is included in the model to control for state size influencing a state's ability to comply with treaty terms and any mitigating effects state size has on state capability to engage with international law. Scholars posit that small states engage differently with the international system than larger states. Population is measured as total population, in thousands, from the United Nations Data.

International Non-Governmental Organizations (INGOs) is included to control for the impact INGOs have in changing state human rights behavior. This variable comes from Simmons (2009), which was an updated version of Hafner-Burton and Tsutsui (2005).

I include two conflict variables, civil war and interstate war. These come from the PRIO Data on Armed Conflict. These are dichotomous variables coded zero when there was not conflict and one when there was. Following from previous studies, we should expect that states engaged in conflicts have worse human rights behavior.

Results

The results presented in Tables 6-10 lend support for my argument that signature, not ratification, is by and large the more important commitment measure when testing for compliance with human rights treaties. Across the models covering both the ICCPR and CEDAW, a clear trend of significance of signature is present. This trend is especially prevalent in the barrier state groups. I find across both ICCPR and CEDAW treaties that a divide exists between the relationship between ratification and compliance versus the relationship between signature and compliance. It is notable to state that across both treaties and across the different types of rights I included, the difference in effect on compliance levels held.

Tables 6 and 7 describe the statistical findings pertaining to the modeling of the determinants of human rights and commitment to the ICCPR treaty. Within each table, I include three models. Model 1 includes all countries in analysis. Model 2 includes only states with legislative barriers to ratification, “barrier states.” Model 3 includes only states without legislative barriers to ratification, “non-barrier states.” Ratification was not significant in any of the models presented in Tables 5 and 6. For neither barrier nor non-barrier states did ratifying the ICCPR significantly increase the expected levels of civil liberties or political rights. The finding that ratification was not associated with a significant change in the likelihood of better human rights is consistent with the existing literature examining international human rights law (e.g. Hathaway 2002 and Simmons 2009).

Signature was significant in Table 6 Models 1 and 2 as well as Table 7 Models 1 and 2. These models captured all countries and barrier states. Not only was signature found to be significant in these models, but it was also found to have a substantial effect on likelihood of better human rights scores. States that signed the ICCPR, had an odds estimate approximately

1.06 lower on a 7-point scale of Civil Liberties than states that did not sign. As Freedom House measures are coded with lower scores capturing lower violations, this signature finding points to the finding that following states signature of the ICCPR treaty, states were likely to have approximately 14% fewer violations than non-signature states. When modeling the determinants of Political Rights, signature was again found to be significant. After states signed the ICCPR treaty, they had an odds estimate approximately .76 lower on a 7-point scale than states that had not signed. This finding is not as strong as that found regarding Civil Liberties, but nevertheless represents a finding that states that signed the ICCPR treaty were likely to have approximately 10% fewer violations as coded on the Freedom House measures than non-signature states.

As expected, states without legislative barriers to treaty ratification did not have a similar relationship with signature actions as states with barriers. In both Table 5 Model 3 and Table 6 Model 3, I find that non-barrier states did not have a significant change in human rights behavior following signature of the ICCPR treaty. This is as expected, as non-barrier states are not anticipating the delays that may come along with ratification barrier and therefore feel less need to signal earlier commitment to human rights treaties through signature.

Tables 8 through 10 present the statistical findings modeling the determinants of human rights measures relating to the CEDAW treaty. I use women's economic rights, women's political rights, and women's social rights measures to capture the relevant human rights measured in the CEDAW treaty. Like the ICCPR models, each table breaks down modeling the human rights between all countries (model 1), barrier states (model 2), and non-barrier states (model 3).

Across the CEDAW models, signature was significant and associated with better women's rights levels. Concerning women's social and political rights in Tables 8 and 9, the

signature action was significant across models including both barrier and non-barrier states. Only in one model, Table 8 Model 3, was ratification significantly associated with better women's rights.

Signature was significantly associated with an increased likelihood of better women's rights recognition across the measures of women's political, social, and economic rights. These measures differ from the Freedom House measures used in the ICCPR models in several important ways to note for interpretation of the statistical models. First, the women's rights measures are coded in a 0 to 3 scale with 0 being the least recognition of rights and 3 being the highest recognition. Second, the measures come from the CIRI human rights database which bases the coding on Amnesty International and United States State Department annual human rights reports. The difference in scaling between the women's rights measures and the Freedom House measures is especially important to note when considering the size of the statistical effect found across the models. When states signed CEDAW, they were significantly more likely to have better women's rights practices than states that did not sign. Concerning women's political rights, Table 3 Model 1 shows that when considering all countries, states that signed the treaty had an odds estimate approximately 2.03 higher than states that did not sign. On a 4-point scale of women's rights measures, this coefficient translates into human rights scores approximately 50% higher than states that did not sign. In most of the models covered in the CEDAW tables, both barrier and non-barrier states had signature as a significant explanatory variable of women's rights levels. Even when signing was associated with better rights recognition in the non-barrier state models (Tables 8 and 9 Models 3), the coefficient was consistently higher for non-barrier states.

As discussed earlier in this chapter in the section describing the characteristics of barrier and non-barrier states, one possible critique is that a state's level of democracy is driving statistical findings rather than barrier or non-barrier status. I find that this is not the case. In only 2 of the 15 statistical models in Tables 6-10 is the polity2 measure statistically significant and associated with better rights practices (Table 9 models 1 and 3 related to women's social rights). There is no broad trend across models that links a state's level of democracy statistically with an increased level of improvement in rights practices. In anticipation of the possible criticism that the significance of signature is actually capturing the difference between democracies and non-democracies, I ran the statistical analyses dividing state groups by democracy score rather than legislative barrier status. The division between democracies and non-democracies did not produce different results in relation to treaty law commitment. In other words, when splitting democracies and non-democracies, I did not find that signature was significant in the democratic state models but not in the non-democratic state models. While a state with high levels of respect for democratic values is logically likely to have better respect for human rights than non-democratic states, the democratic divide was not the factor driving the finding that signature was a significant commitment action towards human rights law. Appendix Table 5 details the ICCPR statistical models split between democracies and non-democracies.

Table 6: ICCPR and Determinants of Civil Liberties, 1977-2006

	Model 1	Model 2	Model 3
<u>Explanatory Variable</u>	<u>All Countries</u>	<u>Barrier States</u>	<u>Non-Barrier States</u>
Ratification	.2984(.3172)	.2681(.4512)	.3692(.7002)
Signature	-1.056(.3313)***	-1.519(.4652)***	-.8407 (.7310)
Accession	-.2741(.2615)	-.3312 (.3195)	-.5350 (.4543)
Succession	-.8636(.3598)***	-1.268(.5980)**	-.5854(.4786)
Polity2	-.0058(.0053)	-.0077(.0064)	.0070 (.0099)
Durability	.0005(.0010)	.0006(.0013)	.0023(.0015)
GDP	-.0000(.0000)	-.0000(.0000)	.0000(.0000)
Population	.0000(.0000)*	.0000(.0000)	.0000(.0000)
INGOs	-.0014(.0002)***	-.0018(.0002)***	-.0017(.0005)***
Interstate War	.2748(.4499)	1.058(.4874)**	.0381(.6541)
Civil War	.9968(.1636)***	.9107(.2114)***	.8757(.3057)***
Observations	3730	1976	1487
<u>Log pseudolikelihood</u>	<u>-6485.0079</u>	<u>-3122.7198</u>	<u>-2686.0574</u>

* p<.10 **p< .05 *** p<.01 regular coefficients, robust standard errors in parentheses ordinal logit regression run on STATA 13.0.

Table 7: ICCPR and Determinants of Political Rights, 1977-2006

	Model 1	Model 2	Model 3
<u>Explanatory Variable</u>	<u>All Countries</u>	<u>Barrier States</u>	<u>Non-Barrier States</u>
Ratification	.2539(.2794)	.3067(.3616)	.2642(.6303)
Signature	-.7626(.3022)*	-1.005(.3634)***	-.5817 (.6585)
Accession	-.1830(.2541)	-.2491(.2903)	-.3829 (.4501)
Succession	-.1.086(.6335)*	-.9504(1.028)	-1.251(.4347)***
Polity2	-.0033(.0054)	-.0046(.0061)	.0094 (.0099)
Durability	.0044(.0011)	.0013(.0018)	.0016(.0014)
GDP	-.0000(.0000)	-.0000(.0000)	.0000(.0000)
Population	.0000(.0000)*	-.0000(.0000)***	.0000(.0000)*
INGOs	-.0019(.0002)*	-.0028(.0034)***	-.0019(.0005)*
Interstate War	.0962(.4307)	1.237(.5430)**	.0953(.5541)
Civil War	.7983(.1558)*	.6185(.2078)*	.8757(.3028)**
Observations	3730	1976	1487
<u>Log pseudolikelihood</u>	<u>-6194.1104</u>	<u>--2921.2959</u>	<u>-2631.9476</u>

* p<.10 **p< .05 *** p<.01 regular coefficients, robust standard errors in parentheses ordinal logit regression run on STATA 13.0.

Table 8: CEDAW and Determinants of Women's Political Rights, 1981-2006

	Model 1	Model 2	Model 3
Explanatory Variable	All Countries	Barrier States	Non-Barrier States
Ratification	-.0246(.2354)	.6502(.4812)	.7470(.3238)***
Signature	2.028(.2995)*	1.320(.4663)***	1.209 (.3945)***
Accession	1.328(.1936)*	1.017(.2991)***	1.584 (.3217)***
Succession	1.945(.5492)*	1.224(.4074)***	1.061(.5913)*
Polity2	.0181(.01423)	.0167(.0282)	-.0188 (.0239)
Durability	.0148(.0052)*	.0053(.0073)	.0075(.0239)
GDP	-.0000(.0000)*	-.0000(.0000)***	-.0000(.0000)*
Population	.0000(.0000)*	.0000(.0000)*	.0000(.0000)
INGOs	.0013(.0001)*	.0026(.0006)***	.0016(.0002)***
Interstate War	.8291(.4299)*	1.664(.6545)***	-.0279(.6467)
Civil War	-.0110(.2045)	-.3907(.3498)	.2942(.3942)
Observations	5249	1768	2675
Log pseudolikelihood	-8576.835	-2082.0673	-2215.4542

* p<.10 **p< .05 *** p<.01, regular coefficients, robust standard errors in parentheses ordinal logit regression run on STATA 13.0.

Table 9: CEDAW and Determinants of Women's Social Rights, 1981-2006

	Model 1	Model 2	Model 3
Explanatory Variable	All Countries	Barrier States	Non-Barrier States
Ratification	-.3001(.2335)	-.4534(.2794)*	-.1423(.4870)
Signature	1.650(.3066)*	1.720(.3743)***	1.332 (.6007)**
Accession	.6419(.1956)*	.5765(.2838)**	.3431(.3036)
Succession	1.284(.5645)*	1.086(.5765)*	1.507(.6219)**
Polity2	.0298(.0137)*	.0200(.0188)	.0476 (.0223)**
Durability	.0141(.0047)*	.0093(.0051)*	.0075(.0239)**
GDP	-.0000(.0000)*	-.0000(.0000)	-.0000(.0000)**
Population	-.0000(.0000)*	-.0000(.0000)**	.0000(.0000)
INGOs	.0092(.0002)*	.0009(.0002)***	.0014(.0005)***
Interstate War	.7662(.3494)*	.7961(.3529)**	1.690(.3685)***
Civil War	.0002(.1834)	-.4710(.2006)	.0360(.3721)
Observations	4876	2675	1768
Log pseudolikelihood	-4987.5675	-3333.777	-1745.5189

* p<.10 **p< .05 *** p<.01, regular coefficients, robust standard errors in parentheses ordinal logit regression run on STATA 13.0.

Table 10: CEDAW and Determinants of Women's Economic Rights, 1981-2006

	Model 1	Model 2	Model 3
<u>Explanatory Variable</u>	<u>All Countries</u>	<u>Barrier States</u>	<u>Non-Barrier States</u>
Ratification	-.0500 (.2975)	-.4682(.4170)	.4400(.5200)
Signature	1.475(.3426)*	2.062(.4681)***	.4760 (.6217)
Accession	1.024(.2102)*	1.368(.3090)***	.2162 (.3145)
Succession	1.820(.4422)*	2.267(.5773)***	.1705(.4306)
Polity2	.0141(.0160)	.0143(.0231)	.0128(.0276)
Durability	.0177(.0056)*	.0146(.0076)*	.0180(.0090)*
GDP	-.0000(.0000)*	-.0000(.0000)	-.0000(.0000)*
Population	-.0000(.0000)*	.0000(.0000)***	-.0000(.0000)
INGOs	.0013(.0002)*	.0014(.0002)***	.0020(.0005)***
Interstate War	.8404(.3934)*	.9665(.3282)***	1.578(.4879)***
Civil War	-.2052(.1972)	-.1917(.2460)	-.2515(.3676)
Observations	5876	2675	1768
<u>Log pseudolikelihood</u>	<u>-4412.5026</u>	<u>-2323.6445</u>	<u>1640.7894</u>

* p<.10 **p< .05 *** p<.01, regular coefficients, robust standard errors in parentheses ordinal logit regression run on STATA 13.0.

It is noteworthy to mention of the fifteen statistical models presented ratification was only statistically significant in one model (Table 7 Model 3). As expected from my argument, ratification was not a significant indicator of behavioral change. By the time a state ratified the treaty, there was little or no change in its rights practices. The negative directionality coincides with arguments and prior findings highlighting the connection between ratification and worse rights practices. Consistent with prior findings in the literature (e.g. Hathaway 2002 and Simmons 2009), I find that ratifying a treaty, or other legally binding commitment, did not increase a state's likelihood to improve human rights practices.

The relationship between accession and succession varied between the treaties and models. Accession actions were significantly associated with better women's rights but not significant when considering civil and political rights. I posited that the later time of commitment and that the action was made by the executive rather than legislature would result in better rights practices. Although accession actions do not generally require legislative approval, accession was not significant in either ICCPR model. In each model, it did have a negative directionality, signaling a decrease in rights violations. This finding is as expected as accessions are made later in the treaty commitment timeline, after the treaty has gone into effect. Accessions may occur when a state has already shifted its practices and therefore we do not see a significant change after a state accedes to a treaty. Future analysis should be conducted to pinpoint why accession actions to CEDAW were significant, but not to ICCPR.

Appendix Figures 1 and 2 plot the changes in predicted probabilities of ratification, signature, accession, and succession to the ICCPR. These graphs convey the change in probabilities of each commitment action and what probability each action has in placing at

various points on the Political Rights and Civil Liberties scales.⁵⁶ From these figures, we see that signature, accession, and succession have increased probabilities of better rights scores (e.g. 1 and 2 on the scales) and decreased probabilities of worse rights scores (e.g. 3-7 on the scales). In contrast, ratification has a decreased probability of better rights scores and increased probability of worse rights scores. These graphs offer additional support for the findings presented in the statistical tables. Notably, signature and ratification commitment actions have opposite relationships with human rights scores. Signature is consistently associated with better rights practices while ratification is associated with worse rights practices.

From the statistical results reported in Tables 1 through 5 and the predicted probabilities shown in Appendix Figures 1 and 2, we observe differing and even opposing patterns of signature and ratification behavior. This coincides with the argument that states sign as they are improving rights practices. States that signed the ICCPR had the highest probability of scoring on the low end of the rights scales (1, 2, and 3) and lowest probabilities of scoring high end of the rights scales (5, 6, and 7). This means that signing was associated with better rights recognition. Succession followed a similar trend line as signature in both graphs. As expected, states that committed through succession had a higher probability of scoring with better practices. Ratification, on the other hand, is associated with lower probabilities overall and with highest change in predicted probabilities at the scores of 5, 6, and 7 which capture worse rights practices.

Based on the statistical results, we do see that accession actions mirror the direction of signature. When we examine the predicted probabilities we see that the trend of predicted probabilities of accession fall between the divergent signature and ratification trends. This could

⁵⁶ Tables reporting the predicted probabilities included in the appendix.

be because the later action of accession, made after the treaty takes effect, corresponds to states having had time to alter their behavior before committing. Because states do not generally require legislative approval for accession, we do observe some trend albeit insignificant that mirrors the signature trend. This could be because while the acceding states have mostly altered their behavior, they still improve rights somewhat following commitment through accession.

Discussion and Revisiting the Hypotheses

The statistical results in this chapter support the argument that states can approach signature as a valid form of legal commitment. States that signed the ICCPR and CEDAW appeared to be doing so sincerely, as the action was statistically significant and associated with better rights practices. This finding was especially true for states with domestic barriers to ratification. States that had the domestic legal barrier of requiring legislative approval before legally binding treaty commitment tended to sign earlier. We see then that signing, not the later act of ratification, mattered in terms of finding an observable difference in compliance levels. This supports Hypothesis 1 which posits that signature will be an important measure of compliance, rather than ratification. By the time the state ratifies a treaty, it will have already shifted its practices and we will not observe a significant level of compliance. Understanding that states can use signature to sincerely commit and alter their behavior prior to ratification helps to explain why prior studies have found bleak results when testing ratification's role on compliance. The findings also lend support to previous studies and arguments that claimed that states do, most of the time, enter into international human rights agreements with good intentions. Table 10 presented below lists the hypotheses tested in this Chapter and whether or not analyses offered support for the hypotheses.

Table 10: Hypotheses Tested in Chapter 3		
Hypothesis Number	Hypothesis Statement	Finding
H1	If a state has legislative barriers to treaty ratification, then it will signal support for treaties through signature earlier than states without barriers.	Supported
H2	If a state has legislative barriers to treaty ratification, then changes in compliance behavior will happen after signature.	Supported

The finding that commitment actions are associated with improved human rights practices is an important finding for scholarship on international law and human rights in particular. Contrary to findings in the existing international relations and international law literatures that find evidence that ratification is not associated with improved rights, and frequently associated with worse rights, I find that signature is associated with better rights. This finding helps bridge the divide that exists in the literature pertaining to whether commitment to international law can change behavior. Rather than expect states to ratify as a hollow gesture for reputational gains or to significantly better practices upon ratification, we find that states work towards better practices. States with domestic barriers to ratification signed ICCPR and CEDAW and improved their practices. By the time they ratified, their human rights practices leveled off and did not improve again.

The descriptive and statistical analyses in this chapter point to two important points for future analyses of compliance with international law to consider:

1. States with domestic legislative barriers to international treaty law approach commitment differently from states without barriers, and future analysis should separate out these states to isolate unique compliance behavior.
2. States approach different commitment actions differently and can sincerely and significantly commit to actions other than ratification. Following from this, future analyses focused on questions of treaty compliance should include all available commitment actions when measuring compliance, not just ratification.

As the only non-binding commitment option, signature allowed states to signal commitment before formalizing treaty commitment at the domestic and international levels. In finding that signature is significant we also can understand why ratification is not. States do not commit to international human rights treaties without forethought. States work towards commitment over time. This chapter considered the domestic legislative actions required for ratification. Once a treaty is created and it is opened for signature, interested states begin to engage with domestic processes to work towards commitment. States build up to ratification. Because any changes in behavior happen before ratification, we do not observe a noticeable change at the time of ratification. The findings highlighting the importance of distinguishing barrier from non-barrier states builds on a growing area in the international relations literature pointing to the role of domestic institutions and processes on international legal behavior (e.g. Lupu 2015).

Distinguishing between the legal forms of commitment proved useful. Across models, ratification action was frequently associated with worse rights practices while the other actions were associated with better practices. Without examining the commitment actions separately, we miss the nuanced way that states engage with international human rights law and what that

engagement means for compliance. That the only commitment action that was significant across both models was signature, reveals that we are overlooking an important action and are incorrect to dismiss it because of its non-binding nature. States seem to be treating signature action seriously, so should we as researchers.

Conclusion

In this chapter, I examined the relationship between domestic legislative barriers to treaty ratification and compliance. I detailed the characteristics of barrier and non-barrier states and examined the role of legislative barriers on ratification timing. I argued that signing a treaty would be associated with better human rights practices. Most states that sign do ratify, but by the time there is domestic legislative support to do so, they have already changed their practices if they were going to. This relationship between signature, ratification, and compliance sheds light on previous findings that conclude that there is no positive relationship between ratification and compliance levels. Counter to previous findings, barrier states actually committed to treaties in less time than states without barriers. States with legislative barriers to treaty ratification signed earlier than non-barrier states. To explore this relationship further, I statistically analyzed the relationship between signature and ratification on compliance levels with human rights treaties. I found that signature, not ratification, was statistically significant in explaining better human rights levels.

The central finding and contribution of this chapter is that actions other than ratification significantly mattered in understanding compliance behavior. Signing a treaty, in the models used, led to better rights practices. This was particularly true in regards to states with domestic legislative barriers to ratification. When separated out by barrier status, signature was not

statistically significant for the non-barrier group. To the knowledge of the author, no other study has yet to empirically analyze and test the role of all commitment actions on human rights law.

There is still much work to do to examine the depth and breadth of the importance of commitment actions, and signature in particular. To better understand the role of the domestic legislative process on commitment and compliance, future studies should more fully incorporate a measure of domestic barriers. Not all domestic barriers carry the same weight in deterring action nor do they require the same amount of time to overcome.

This chapter did not delve fully into the question of whether states improve practices because of legal commitment or they legally commit when they have positive rights practices. In other words, what is the directionality of the relationship between human rights practices and legal commitment? However, in seeing that signature was associated with better practices while ratification was not, it may be the case that signature may not only replicate previously existing rights conditions but represent a beginning of a process of improving rights. In Chapters 4, 5, and 6, I explore the cases of Canadian, Dutch, and American treaty engagement over time I shed light on the directionality and causal pathways between signing treaties and improving human rights practices.

This chapter focused on the ICCPR and the CEDAW because of their prominence in international law and the wide range of rights covered. It is not yet clear if this finding will be consistent across all United Nations treaties or even all human rights treaties. What is clear from this analysis is that in excluding signature in previous studies, we have overlooked an action that has the potential to significantly convey a state's sincere commitment to international law and in doing so overlook a valuable indicator of compliance levels. Similarly, in overlooking the difference between barrier and non-barrier states, we have missed a set of states altering their

behavior after committing to international treaty law. In the following chapters, I explore these relationships more to provide a deeper understanding of the role of domestic barriers and international legal behavior.

CHAPTER 4

The United States

The United States holds a unique and two-sided reputation when it comes to international human rights law. On the one hand, the United States stood at the forefront of human rights law, recently advocating at the United Nations to expand the definition of human rights law to include gay rights. On the other hand, the United States notably failed to ratify popular human rights treaties. Three states have yet to ratify the Convention on the Rights of the Child, Somalia, South Sudan, and the United States. The Economist noted the discrepancy in the United States in this group of non-ratifiers. “Somalia is anarchic and South Sudan became a country only two years ago. What is stopping America from ratifying the treaty?” (The Economist 2013). The answer to this important question can be found, in part, in the extensive legislative involvement required for treaty ratification and incorporation in the United States. Through case analysis of the United States in this chapter, I illustrate how United States human rights practices improved after signing the Convention on the Elimination of all forms of Racial Discrimination. The United States legislative involvement with treaty law influenced the 1) timing of signature and ratification and 2) timing of observed compliance. Through this case discussion, I add additional evidence to that found through statistical analysis in Chapter 3 to highlight the role that the legislature plays during a state’s commitment to and compliance with international human rights law.

Despite the noted delays in ratifying, the United States has, in fact, committed to many treaties. It signed the CRC, CEDAW, and many others. Coupled with signing international human rights law, United States presidents frequently voice their support for treaties. Presidents Clinton and Obama both vocally supported the ratification of the CRC; however, Senate

Republicans blocked bringing the treaty to the Senate floor for a vote. The United States is not the only state committing to international law through signature nor is the United States the only state with domestic legislative barriers to ratification. As noted in Chapter 2, 61% of states face legislative barriers to ratification.⁵⁷ When considering commitment to human rights treaties, more states signed than ratified. However, not many scholars or activists rush to congratulate the United States, or other states, for signing treaties. Nor do many scholars rush to study the frequent commitment action of signature. As a notable case of domestic ratification barriers, the United States offers an illustrative case example of how domestic legislative ratification barriers impact ratification and compliance.

I begin this chapter by detailing the United States domestic policies and practices concerning the commitment to and implementation of international human rights law. Through this discussion, I document which domestic actors are involved in the international legal commitment and legal incorporation into domestic law. I also detail the standing of international law relative to domestic law in the United States, discussing the extent to which domestic courts in the United States draw from international law for precedent. Then, I explore the case of the United States commitment, compliance, and post-commitment action activity related to the Convention on the Elimination of all Forms of Racial Discrimination. Through this case analysis, I highlight the ways through which legislative ratification requirements prolong ratification timing.

⁵⁷ This statistic comes from using the Simmons (2009) ratification rules breakdown.

Case Selection and Overview

Why the United States?

The United States is one of the most visibly engaged, and at times disengaged, states with international law. Analyzing the commitment and compliances of the United States in this chapter offers insights into state behavior. The United States offers an illustrative example how a state with legislative barriers to ratification signs human rights treaties early and improves practices prior to ratification. In the case of the United States, it improved human rights practices domestically at the same time as it signed the CERD and continued improvements thereafter all prior to ratification. The United States represents one of three diverse cases across the categories of legislative approval requirement for ratification and the extent to which the legislature is involved in incorporating international law into domestic law. The United States is a case wherein the executive branch faces legislative involvement to committing to and implementing international law, even when the executive branch fully supports it.

Why CERD?

I begin the chapter by focusing on the United States and the Convention on the Elimination of all forms of Racial Discrimination (CERD). The United States offers an example of a state requiring extensive legislative involvement to approve ratification. According to the United States Constitution, the United States approaches international law from the monist tradition, although, in practice it has a distinct dualist approach to international law. The United States is notorious in the international community for prolonged periods between signing and ratifying international law. In examining CERD, I trace United States ratification and

incorporation processes beginning with involvement in treaty negotiations to contested compliance in the present day. The United States signed CERD in 1966, when the treaty opened for signature, and ratified it 1994. This is a 28-year gap between signing and ratifying. This large commitment gap is typical for the United States, with other important human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) having a 26 year gap between opening for signature and ratification. On average, it took the United States about 21 years to ratify the human rights treaties it has ratified thus far. Through tracing the domestic practices of the United States related to CERD ratification and compliance, I highlight the mechanisms underlying the statistical relationship between signing and behavioral shifts found in Chapter 3.

The CERD case discussion begins with outlining domestic ratification requirements and process of implementation into domestic law. In this section, I present how domestic courts cite and reference international law and the general trends in the state towards international treaty law. Through the treaty case, I explore the domestic factors influencing ratification timing including the role of the executive, debates in the legislatures, and movements supporting or challenging state ratification. Next, I explore what happened after ratification. How, when, and to what extent was the international treaty to which the state committed incorporated into domestic law? Then, I analyze state compliance with the treaty. How did the international and domestic rights communities view state compliance after commitment? I conclude by situating the case findings within the broader statistical trends presented in Chapter 3. This discussion aids in contextualizing the relationship between legislative barriers, commitment actions, and timing of behavioral shifts.

Domestic Laws of Ratification and Implementation

Domestic Law on Ratification

The United States Constitution describes the ratification process: the president “shall have power, by and with the Advice and Consent of the Senate, to make treaties, provided two-thirds of the Senators present concur” (US Constitution Article 2 Section 2). The requirement of Senate approval makes ratification a rigorous process in the United States, earning the Senate the reputation of the graveyard of treaties, where treaties are rejected or fail to make an appearance onto the Senate floor.

Technically, the Senate does not ratify international treaty law for the United States, but rather recommends or rejects ratification (Crabb, Antizzo, and Saredidine 2000, 196). An important part of this recommendation process is the advice and consent of the Senate Committee on Foreign Relations. Senate procedures such as advice and consent “allow and encourage partisan and ideological opponents . . . to engage in dilatory tactics” which delay the processes (McCarty and Razaghian. 1991, 1122). After a president submits a treaty to the Senate Committee on Foreign Relations, it can reject the treaty for consideration, or table it, delaying the treaty from (potentially ever) reaching the Senate floor for vote.⁵⁸

The United States Senate rejected 21 treaties out of over 1500 treaties in the past 200 years, obtaining the required two-thirds of the Senate votes most of the time. Only 6 of the rejected 21 treaties were multilateral treaties, with the majority of rejected treaties being bilateral treaties. The multilateral treaties rejected by the Senate were the Treaty of Versailles (rejected in 1919 and 1920), the World Court (rejected in 1935), the United Nations Convention on the Law

⁵⁸ See for example a list of currently pending treaties in the US Senate, with one pending since 1949.

of the Sea (rejected in 1960), the Montreal Aviation Protocols (rejected in 1983), the Comprehensive Nuclear Test Ban Treaty (rejected in 1999), and the Convention on the Rights of Persons with Disabilities (rejected in 2012).⁵⁹ In considering outright rejections alone, the United States Senate might look supportive, even welcoming of multilateral human rights treaties. However, this figure is misleading. As Kelley and Pevehouse (2015) document, although the United States Senate rarely rejects treaties, it is a frequent practice for treaties never to reach the Senate floor for a vote. The anticipation of treaty rejection determines the demise of a treaty almost, and potentially more so than an actual Senate vote.

Two other commitment actions in the United States do not require legislative approval: signature and executive agreements. United States domestic law has a simpler procedure for signature which is controlled by the executive branch.⁶⁰ The United States Secretary of State authorizes the negotiation of a treaty, United States representatives participate in the negotiation, and following negotiations, the United States Secretary of State authorizes signature.⁶¹ The United States Supreme Court held in *United States v. d'Auerville* in 1851 that “a treaty limits sovereign power from the moment of signature, even if the treaty does not enter into force until a subsequent exchange of instruments of ratification.”⁶² The separation of signature and ratification between the Executive and Legislative branches allows for the administration in power to advance treaties it supports via signature without the consent of the opposition party in the Senate.

⁵⁹ United States Senate. 2016. The Senate’s Role in Treaties: Rejected Treaties. Accessed at <http://www.senate.gov/artandhistory/history/common/briefing/Treaties.htm>

⁶⁰ <http://www.gpo.gov/fdsys/pkg/CPRT-106SPRT66922/pdf/CPRT-106SPRT66922.pdf> 111

⁶¹ http://law.duke.edu/ilrt/treaties_3.htm

⁶² *United States v. d’Auerive*, 51 US 609, 622-24(1985) discussed in Sloss, Ramsey, and Dodge (2011) 15.

Presidents can opt to pursue Executive Agreements for the creation of/commitment with international law to bypass the legislative approval required by the treaty law route. In fact, executive agreements constitute the majority of all U.S. international agreements estimated as high as 90% of international agreements (Johnson 2013; Krutz and Peake 2009, 24). Although this avenue may sound less arduous as it circumvents the Senate approval phase, Congress remains involved through either budgetary approval for implementing provisions of the agreement or through required ex post congressional approval via joint resolution before the executive agreement enters into force (Klarevas 2003, 394). The presidential use of executive agreements as a means to forgo the ratification procedure has dramatically increased over time, from an estimated 31% of all international agreements between 1789-1839 to 94.3% of all international agreements between 1939-1989 (Krutz and Peake 200, 42). Despite the increased use of executive agreements over time, human rights treaties have traditionally been presented to the Senate as treaties. Presidents have not challenged this precedent and continue to submit international human rights agreements as treaties via the Senate approval process (Garcia 2015, 8; Kaufman 1990) even when the “Senate has routinely turned aside or eviscerated human rights conventions signed and submitted by presidents” (Krutz and Peake 2009, 48). One reason for this purpose of ratification action over executive agreements is that they can be overturned by the next president (Paletta 2015).

The United States domestic process of ratification has notably delayed or derailed important human rights treaties. The United States signed the Convention on Economic, Social, and Cultural Rights in 1977, the Convention on the Elimination of All Forms of Discrimination against Women in 1980, and the Convention on the Rights of the Child in 1995. It has yet to

ratify any of these treaties. Failure to ratify these treaties groups the United States into the company of other, less democratic states, such as Iran, Somalia, and Sudan.

The only human rights treaty that the United States signed was supported by the Senate Foreign Relations Committee, brought to the Senate floor for vote, and then subsequently rejected for ratification was the Convention on the Rights of Persons with Disabilities (CRPD). The executive branch and Secretary of State John Kerry, in particular, advocated for ratification. Susan Rice signed the CRPD on July 30th 2009 on behalf of the United States. The signature timing coincides with major amendments to the Americans with Disabilities Act, expanding and updating the provision of disability rights going into effect on January 1, 2009: “The ADA Amendments Act rejects the high burden required [by the Supreme Court] and reiterates that Congress intends that the scope of the Americans with Disabilities Act be broad and inclusive.” When brought to a vote in 2012, the United States Senate rejected ratifying the CRPD. Although the treaty codifies existing domestic law, gained executive support, and support from the Senate Foreign Relations Committee, the United States was unable to ratify the treaty due to the legislative barriers in place that enabled opposition groups to bar the ratification, despite widespread support.⁶³

Human rights NGOs, international organizations, and other states criticize the speed at which the United States ratifies treaty law and its seeming hypocrisy when it fails to do so. The groups consistently point to the disjuncture between the rhetoric of rights the United States uses to promote human rights practices and actual practices. NGOs encourage improved behavior globally while unwilling or unable to demonstrate commitment to those rights through treaty

⁶³ Parental and homeschooling groups, in particular opposed the CRPD based on its higher sets of regulation for children with disabilities. See for example ParentalRights.org and Home School Legal Defense Association (HSLDA). Both groups viewed CRPD as attacking parental rights and subjecting parents and Americans to oversight by “UN Bureaucrats.”

ratification. According to Jo Becker from Human Rights Watch “It is awkward when the US tries to promote child rights in other countries- they all remind us that they’ve joined the treaty and we have not” (quoted in *The Economist* 2013). During the Cold War, the Soviet Union in particular criticized the United States for its human rights rhetoric when it refused to accept legal obligations via treaty ratification. A Soviet delegate criticized the United States for endorsing the creation of the UN High Commissioner for Human Rights in 1966, stating that the US endorsement was “hypocritical” and “almost indecent” given that the United States “resolutely refuse(d) to accept legal obligations” in ratifying human rights treaties (Korey 1967, 421). Other states, even those not entangled with the United States in the Cold War, find the United States failure to ratify human rights treaties both puzzling and problematic. Delegates “find the U.S. failure to ratify human rights treaties incomprehensible” (Korey 1967, 422). This quote is from 1967 in regard to the United States failure to yet ratify the Convention on the Prevention and Punishment of the Crime of Genocide, the Forced Labor Convention, and Political Rights of Women Convention.⁶⁴ It would take another two decades for the United States to ratify the Genocide Convention in 1988, 40 years after signing the treaty.

The domestic process requiring Senate approval of international treaty ratification makes diplomats in the United States and other states keenly aware of ratification difficulties during negotiations. In writing about negotiating in his seminal Two-Level Games article, Putnam wrote that “The difficulties of winning congressional ratification are often exploited by American negotiators” (Putnam 1988, 440). For example, President Carter warned Panamanian politicians that “further concessions by the United States would seriously threaten chances for Senate

⁶⁴ Not to be confused with the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Political Rights of Women was created in 1953. The United States acceded to the convention in 1976.

ratification” (Habeb and Zartman 1986, 42) of the Panama Canal Treaty. During the Second Hague Conference in 1907, “much anxiety was expressed on the part of certain powers regarding the difficulty of negotiating treaties with the United States, because there is no guaranty that the treaties would be ratified by the Senate or that Congress would pass the legislation which might be necessary to carry them into effect, or that the treaties, if actually ratified and the legislation passed, would be observed by the Government of the United States” (Carnegie Endowment for International Peace 1917, 130).

The trend in the United States is one towards longer times for ratification of human rights treaties and failure to ratify treaties altogether. The legislative barrier of requiring two-thirds Senate approval for treaty ratification allows partisan politics to override the ratification process. As of 2015, there were 38 treaties pending in the Senate.⁶⁵ Four of the pending treaties were in the issue area of human rights and one additional treaty covered humanitarian law.⁶⁶ The pending treaties highlight the length of time required throughout the United States domestic processes. The International Covenant on Economic, Social and Cultural Rights opened for signature in 1966, was signed by the United States in 1977, and was submitted to the Senate in 1978. Since 1978 there has been no vote approving or rejecting the treaty.

Domestic Law on Implementation

In the United States, international law legally supersedes domestic law. The United States Constitution articulates, through the Supremacy Clause, that “all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and

⁶⁵ As of April 27, 2015 list updated by the Office of the Legal Adviser, Treaty Affairs, US Department of State. Accessed at <http://www.state.gov/s/l/treaty/pending/>

⁶⁶ ICESCR submitted to the Senate in 1978, American Convention on Human Rights submitted to the Senate in 1978, the Convention on the Elimination of All Forms of Discrimination Against Women was signed by the US in 1980 and submitted to the Senate in 1980, Protocol II to the Geneva Conventions was signed in 1977 and submitted to the Senate in 1987, Convention on the Rights of Persons with Disabilities signed in 2009 Submitted to the Senate in 2012.

the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding” (US Constitution Article 6). The potential of international agreements taking direct effect contributes to the length and fervor of the domestic commitment process. Self-executing treaties have a status “equal to federal statute, superior to U.S. state law, and inferior to the Constitution” (Garcia 201, 1).

The self-executing status and direct implementation of treaty law in the United States has been challenged numerous times, notably with the U.S. Supreme Court case *Foster v. Neilson* 1829 (27 U.S. (2Pet.) 253 1829)). The court upheld the supremacy clause while introducing the distinction of self-executing vs. non-self-executing, “In the United States a different principle is established. Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of legislature, whenever it operates of itself without the aid of any legislative provision.”⁶⁷ Although historically, the United States interpreted international law as supreme and largely self-executing, a recent trend in United States court decisions directed legal interpretation away from direct incorporation. Hathaway, McElroy, and Solow (2012) posit that the shift away from the American interpretation of treaties as self-executing was tied to the increase in human rights treaties and the fear that they would be used to promote racial equality in the United States: “The human rights treaties during the postwar period thus generated a backlash, particularly among those who feared the human rights treaties might be used to challenge Jim Crow laws in the South” (69).

In *Medellin v. Texas* (2008), the United Supreme Court upheld that international law was not self-executing. The United States Supreme Court ruled that an International Court of Justice holding requiring that the United States reconsider the conviction of Jose Medellin and 50 other

⁶⁷ *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 314 (1829).

individuals based on the United States not informing them of their right to consult with consulates, as agreed to in the Vienna Convention on Consular Relations, was not directly enforceable. The United States Supreme Court cited that the treaties granting jurisdiction to the International Court of Justice were not self-executing and had not been implemented into domestic law by the United States Senate. This Supreme Court decision produced the “background presumption” against interpreting treaties to confer private rights even if the treaty is self-executing. This ruling surprised many. Hathaway, McElroy, and Solow (2012) describe that the ruling meant that treaties would have to be implemented by Congress, but “Congress of course had not passed implementing legislation – probably because nearly everyone had long assumed that the treaties at issue were legally binding, making implementing legislation unnecessary” (53).

United States courts increasingly cite international law, but it is not treated as binding precedent onto domestic law. The United States Supreme Court offers contrasting views on the application of foreign and international law onto domestic law. Justice Rehnquist criticized Justice Breyer’s reference to foreign law and court rulings in *Foster v. Florida* (USSC 2002) as “failing to ground support...in any decision in an American court.” Rehnquist continued on to distinguish the role of foreign law in the Senate versus the Supreme Court, “While Congress, as a legislature, may wish to consider the actions of other nations on any issue it likes, this Court’s Eighth Amendment jurisprudence should not impose foreign moods, fads, or fashions on Americans” (*Foster v. Florida*, 537 U.S. 990 (2002)). In *Lawrence v. Texas* (2003), Justice Kennedy cited foreign legal decisions and those within the European Court of Human Rights to overturn the anti-sodomy provisions in *Bowers v. Hardwick* (1986). Of course, this interpretation was not uniform. Justice Scalia challenged Kennedy’s interpretation through his

written dissent, writing of the discussion of foreign and international law to overturn *Bowers v. Hardwick* (1986) as “meaningless” and pointed to the “many countries that have retained criminal prohibitions on sodomy” (*Lawrence*, 539 U.S., 2495). This clash between the majority and dissenting opinions in the United States Supreme Court highlights the continued contested interpretation of the role, importance, and weight of international law in the United States domestic context.

Post-Commitment Actions

In the United States, the legislative branch controls the content of post-commitment actions. During the Senate advice and consent process, the Senate Committee on Foreign Relations drafts and submits post-commitment actions along with its recommendation to ratify. Auserwald and Matlzman (2003) argue that the Senate’s use of reservations has “significantly altered presidential behavior” and “allows the Senate to bypass many of the compromises inherent in the normal policymaking process” (1098). This process has drawn criticism from legal scholars and the international community for the effect of reservations, in particular on United States commitment to human rights laws (e.g. Human Rights Watch 2009). In discussing the United States post-commitment actions, and reservations specifically, Louis Henkin (1995) wrote that the “practice threatens to undermine a half-century of effort to establish international human rights standards as international law” (349). Once the Senate recommends a treaty for ratification, the president can opt not to ratify the treaty based on the post-commitment actions added on. This is not a common practice, in part as a result of the time and political costs associated with sending the treaty to the Senate Committee on Foreign Relations and the Senate floor for vote (see Kelley and Pevehouse 2015).

Treaty Case: The Convention on the Elimination of all Forms of Racial Discrimination (CERD)

When charged with the same crime, African-American men are six times more likely to be incarcerated than white men.⁶⁸ Black men were likely to receive prison sentences almost 20% longer than those of white men for the same crime.⁶⁹ Even in preschool, African-Americans face discrimination, with almost half of all preschool suspensions made up of African-American children while they make up only 18% of all preschoolers. Racism and racial discrimination pervade the United States.

CERD promotes equality in many areas of life and society including education, criminal justice, and voting. CERD was created in 1965 as a treaty specifically aimed to combat racial and ethnic discrimination worldwide. The treaty developed out of working groups and discussions in the United Nations in the early 1960s calling for a treaty to distinctly protect minority rights (UN Economic and Social Council 1961). Despite these protections and the United States commitment to these protections through treaty ratification, gross violations continue within the United States. Following signature of CERD, a dramatic shift in attitudes and expansion of anti-discrimination policy did take place in the United States that cannot be accounted for when only examining changes in anti-discrimination behavior post ratification. While the United States is far from practicing racial equality in all of the areas of societal, justice, and political issues covered in CERD, the case of the United States illustrates how the United States improved rights practices after signature, improving compliance prior to

⁶⁸ US Bureau of Justice Statistics, Prisoners in 2011, 8 tbl. 8 (Dec. 2012).

⁶⁹ The Racial Gap in Men's Sentencing. The Wall Street Journal. Feb 14 2013.
<http://www.wsj.com/articles/SB10001424127887324432004578304463789858002>

ratification. By the point of ratification of CERD, the United States practices had, overall, improved.

The United States contributed to the development of the treaty throughout its drafting and negotiation as a “leading participant in the long process” (Bitker 1970, 68). The treaty was initially prompted by swastika paintings in Europe and other forms of anti-Semitic acts occurring between 1959 and 1960 (Meron 1985, 283) making Western states receptive to the calls for protection against discrimination from African states (Schwelb 1966, 998). The United States was one of 14 states part of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights in 1961, which was the first step in the development of CERD at the United Nations.⁷⁰

The United States offered support for CERD in the General Assembly in 1965. Arthur Goldberg, US ambassador to the United Nations, spoke of the importance of the treaty:

It is not enough to solve the many political problems that made peace so vulnerable; it is also necessary to eliminate all instances of inequality and man’s inhumanity to man. . .

The Convention synthesizes the views held but the great majority of the Member States concerning the evil nature of racial discrimination and the need for its total elimination . .

. the sincerity of the States Parties will be measured by the speed and effectiveness with

which states act to put racial discrimination to an end. (UN General Assembly, 3rd

Committee 1373rd meeting⁷¹)

⁷⁰ Other members included: UAR, Sudan, UK, Philippines, France, Poland, India, Austria, Lebanon, Uruguay, Finland, Chile, and the USSR as detailed in the Report of the 13th Session of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities to the Commission of Human Rights. 1961. Pg 5. Accessed at http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.4/Sub.2/211

⁷¹ 14 December 1965 accessed at http://uvallsc.s3.amazonaws.com/travaux/s3fs-public/A-C_3-SR_1373.pdf?q1eYL_3T2WbebxjyCcG_tnwRzP7PZ

The CERD explicitly condemns racial discrimination, “the existence of racial barriers is repugnant to the ideals of any human society” and expressed the United Nations alarm of “manifestations of racial discrimination still in evidence...by government policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation” (CERD preamble). The United States argued for an expansion of the definition of racial discrimination in the treaty to explicitly include anti-Semitism during the negotiation process, but this motion was defeated under the argument that anti-Semitism already fell within the meaning of racial discrimination and therefore did not require explicit mention.⁷² Article 1.1 of CERD defines racial discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

To understand the delayed ratification of CERD, we must first understand the United States political context leading up to CERD. The United States worried that committing to international human rights law would highlight its own domestic racial discrimination and rights violations. In 1951, African American leaders presented the United Nations General Assembly with the petition “We Charge Genocide” documenting the crimes carried out against African Americans, charging, “We maintain, therefore, that the oppressed Negro citizens of the United States, segregated, discriminated against and long the target of violence, suffer from genocide as the result of the consistent, conscious, unified policies of every branch of government” (Civil Rights Congress 1951). As a result of this petition and other condemnation, United States

⁷² UN Doc A./C.3/L.11211 (1965) and UN Doc A./C.3/L.1244 (1965).

Senators expressed reluctance to ratify the Genocide Convention as they feared that racial discrimination and lynchings would qualify as genocide under the convention (LeBlac 1991).

This fear of the application of international law to the discriminatory, violent, and segregationist policies in the American South contributed to the Bricker Amendment, which effectively blocked the United States from ratifying human rights treaties. Senator John Bricker and other conservatives worried that United States ratification of human rights treaties would enable individuals to apply international standards of equality in United States courts, thus challenging segregationist laws. Concern with the imposition of international law onto domestic law, Senator Bricker proposed a Constitutional amendment to the Committee on the Judiciary in 1953. This proposed amendment checked the power of the executive and the scope of treaty ratification. Specifically, it wrote:

Section 1. A provision of a treaty which conflicts with this Constitution shall not be of any force or effect.

Section 2. A treaty shall become effective as internal law in the United States only through legislation which would be valid in the absence of a treaty.

Section 3. Congress shall have power to regulate all executive and other agreements with any foreign power or international organization. All such agreements shall be subject to the limitations imposed on treaties by this article.

Although ultimately defeated, the so-called Bricker Amendment shaped the American approach to human rights treaty ratification for decades afterwards. Louis Henkin famously quipped, “Senator Bricker lost his battle, but his ghost is now enjoying victory in war” (Henkin 1995, 89). While the amendment failed to pass, the Senate opposition to treaty law altered future United States engagement with international human rights law. Senators were particularly cautious of

human rights law that had the potential to highlight the United States' racist policies and practices in particular. As a direct result of the Bricker Amendment movement, the Eisenhower administration agreed not to ratify any future human rights treaties (Forsythe 2000, 42).

Opponents to CERD were able to put pressure on their senators and encourage opposition of the treaty (Boyle 1989, 74). The African-American community was not as embedded in representative politics and thus was unable to effectively push for earlier ratification. Jennings (1997) posits that a stronger, embedded African-American community would have been better able to promote the CERD treaty. "A politically stronger black community would have possibility served to put pressure on government representatives to ratify the Convention earlier" (Jennings 1997, 599). Noted African American activists W.E.B. Du Bois, Walter White, and Mary McLeod Bethune were involved with promoting the inclusion of racial equality in United Nations policy since the San Francisco Conference in 1946 wherein states signed the Charter of the United Nations (McDougall 1997, 572). Also in 1946, the National Negro Congress of the United States called on the United Nations Economic and Social Council to consider racial discrimination in the United States and make recommendations to "ensure U.S. compliance with international human rights standards" (McDougall 1997, 573). However, at the time President Truman dismissed these actions as having no binding qualities.

Signature and Marching toward Compliance

Despite the context of racist opposition to the expansion of African American rights, the executive branch had long supported CERD contributing to the drafting and negotiation of the treaty. With this history of executive branch involvement, it is not surprising that the United States quickly signed the treaty on September 28, 1966. U.S. ambassador to the United Nations

Arthur J. Goldberg acted as plenipotentiary and signed on behalf of the United States government. Per United States policy, the executive branch was responsible for the negotiation process and the signing of the treaty. In a declaration upon signature, the United States articulated the view that no additional domestic legislation was required to implement the terms of the treaty:

The Constitution of the United States contains provisions for the protection of individual rights, such as the right of free speech, and nothing in the Convention shall be deemed to require or to authorize legislation or other action by the United States of America incompatible with the provisions of the Constitution of the United States of America.⁷³

Goldberg noted the timing of CERD signature coinciding with a concerted effort of the United States to move towards racial equality. At the announcement of signing the CERD treaty, Arthur J. Goldberg describes the treaty as “completely with the policy of my Government and the sentiments of the overwhelming majority of our citizens” (New York Times July 7 1966). He describes the United States efforts against racial discrimination following signature: “We have made much progress in the past few years, and while not all of our ills have been cured, we are on the march” (New York Times July 7 1966).

Leading up to CERD signing, the United States demonstrated its commitment to eliminating racial discrimination by adopting several important anti-discriminatory laws consistent with the policies and intentions found within CERD. Both the Civil Rights Act of 1964 and the Voting Rights Act of 1965 were passed domestically prior to CERD opening and signature, while the United States was engaged in developing the CERD language and terms at the United Nations.

⁷³ Declaration to the CERD made upon US signature 28 September 1966. United Nations Treaty Series Vol. 660-14 No. 9464. 1969 p 318.

Following signature, the United States remained committed to CERD, advancing anti-discrimination policies. The executive branch continued the move towards racial equality and compliance with CERD in the years following signature and preceding ratification. In major cases, such as *South Carolina v. Katzenbach* (1966) and *Allen v. State Board of Elections* (1969), the United States Supreme Court upheld the Voting Rights Act, reiterating US commitment to anti-discriminatory policy. The Voting Rights Act was amended and expanded in 1970, 1975, and 1982. In 1966, the United States Supreme Court held that Virginia's state poll tax was unconstitutional in *Harper v. Virginia State Board of Elections*.

One controversial part of CERD for the United States was Article 5(d) (iv), which required that:

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: d) other civil rights in particular: (iv) the right to marriage and choice of spouse.

At the time of signature in 1966, interracial marriage remained a controversial issue, still illegal in some states, and caused the United States reticence in supporting the treaty (Bitker 1970, 77). The United States Supreme Court case *Loving v. Virginia* (1967) ruled that Virginia law prohibiting interracial marriage was unconstitutional, thus aligning United States domestic law with the terms of CERD.

The executive branch continued support of the treaty and depicted the United States as in compliance with the treaty, with racial discrimination a problem of the past. In presenting the CERD to the Senate for advice and consent, President Jimmy Carter wrote that racial discrimination was a “problem which in the past has been identified with the United States;

ratification of this treaty will attest to our enormous progress in this field in recent decades and our commitment to ending racial discrimination” (Congressional Record –Senate February 23, 1978 S-2140). He also wrote that if the Senate gave its advice and consent to ratify CERD, he would establish “communications in which a state party alleges that another State Party has committed a violation of a human right set forth in this Convention” as articulated in CERD Article 33. The discussion of CERD provisions as “accepted in United States law and practice” contrasted with the discussion of the ICESCR as “while also reflective of United States law and policy, is primarily a statement of goals to be achieved progressively, rather than through immediate implementation” (Carter 1977).

In writing about the provisions of CERD, Deputy Secretary of State Warren Christopher highlighted how the United States domestic policies had shifted in alignment with CERD provisions. Article 1 and Article 2 articulates programs that have “come to be known in the United States as “affirmative action” programs” (Department of State: 1977). In 1967, the Department of Labor found that non-white workers were “almost wholly excluded from membership in the industrial and craft unions...in the city of Philadelphia” with the exclusion “tantamount to unemployment” (Marcus 1970, 817). In 1969, the Nixon Administration implemented The Philadelphia Order, revising the Philadelphia Plan established by President Johnson’s Executive Order 11246. The Plan required “that bidders on any federal or federally assisted construction contracts for projects in a five-county area around Philadelphia...submit an acceptable affirmative action program which includes specific goals for the utilization of minority manpower in six skilled crafts” (441 F.2d 159). President Carter consolidated affirmative action policies in 1978 via Executive Order 12086. In forming the approach to affirmative action via an Executive Orders, Presidents Johnson and Carter side-stepped the

legislature to advance commitment to racial equality found in CERD. President Nixon supported a revised Philadelphia Plan, met with great opposition in Congress, from Southern Democrats, Republicans, and labor unions. The opponents of the Plan contested upholding executive orders and wrote “if the President (Nixon) were allowed to be so bold in using his contracting powers there would be little need for Congress” (Remmert 1969, 1037). Democrat Roman Pucinski accused Nixon of “attempting to usurp the rightful power of Congress while camouflaging his actions with civil rights rhetoric” (Hood 1993, 159). Despite this opposition, an amendment was defeated which would have limited Presidential power to enact the Executive Order 11246, allowing Nixon to implement the Philadelphia Plan.⁷⁴

The executive branch continued engagement with the CERD treaty prior to ratification. On June 17 1974, the United States declared, alongside the United Kingdom and France, the application of CERD to Western Sectors of Berlin, “provided matters of security and status are not affected.”⁷⁵ The three states similarly declared in July 1975 the applicability of international agreements to the Western Sectors of Berlin.⁷⁶

Despite the commitment of the Johnson administration to the principles in CERD, the legislature and following administrations did not support treaty ratification. The road to ratification was long and fraught with more obstacles than that of signature. Several factors impeded the United States ratification of CERD. Primarily, the racist, discriminatory practices dominating the United States and the American South, in particular, clashed with the CERD

⁷⁴ United States Congress, House, Vote on Motion to adopt committee amendment, Section 904 (Amendment 33 in the House) to Supplemental Appropriations Bill of 1970, HR 15209, 91st Congress, 1st Session, December 22 1969, Congressional Record, CXV, 40921.

⁷⁵ United Nations Treaty Series Volume 940. Nos. 13384-13399. 17 June 1974 p 336.

⁷⁶ United Nations Treaty Series Volume 973. Nos. 14097-14108. 8 July 1975 p 232.

convention's promotion of racial equality. Conservative groups and politicians balked at changing the status quo of existing discrimination.

President Carter presented CERD, along with ICCPR, ICESCR, and the American Convention on Human Rights to the United States Senate on February 23, 1978. The submission to the Senate Committee on Foreign Relations in 1978 coincided with a time of increased recognition of the importance of human rights on the part of the United States government. In 1975, Congress passed Section 116 of the Foreign Assistance Act of 1961 to include that no foreign aid or assistance be given to "the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights." In the 1975 amendments, the Senate clearly articulated the United States' commitment to human rights:

It is the policy of the United States in accordance with international obligations as set forth in the Charter of the United Nations and in keeping with the Constitutional heritage of the United States, to promote and encourage increased respect for human rights...to this end, a principal goal of the foreign policy of the United States is to promote the increased observance of internationally recognized human rights by all countries.

(Section 502 B Foreign Assistance Act)

Following submission to the Committee on Foreign Relations, the Committee held hearings on CERD for four days in November 1979. Senator Pell spoke of the movement of CERD through congressional channels, referencing the impact of the Iran Hostage Crisis on Carter's ability to bring the treaty to a vote: "The Foreign Relations Committee held a hearing on the convention but unfortunately, domestic and international events at the end of 1979 prevented the committee from moving to a vote on it" (United States Congress 103rd Congress).

After the hearings in 1979, no further action was taken toward CERD ratification in the United States Senate until June 2, 1994 when the Committee recommended ratification with the post-commitment actions of RUDs attached. In the intervening years between Committee on Foreign Relations hearings and Senate ratification, the United States continued to march toward complying with CERD. The failure to ratify the treaty during this time led to the “embarrassment of U.S. officials” (Congressional record 101st Congress 1989-1990 May 10, 1989). There was a push for the Bush Administration to ratify CERD as one select human rights treaty to lead the way for other human rights treaties waiting ratification. Following CERD ratification, the Bush Administration would introduce other treaties. “If that goes well, the other major human-rights covenants could be proposed (Congressional record 101st Congress 1989-1990 May 10, 1989).

After signature, CERD was referenced in court cases in the United States. In *People v Levins* (1978), Justice Newman “agreed that the defendant had a right to a post-indictment preliminary examination, pointing to amicus briefs by the ACLU suggesting that the court consider the UDHR and the ICCPR as well as articles citing CERD.”⁷⁷ In the 1987 case *McClesky v. Kemp*, petitioners argued that the international standard for determining racial discrimination was a “purpose or effects” test (Daniel 2011, 271). They cited the CERD definition of discrimination to be “any distinction, exclusion, restriction or preference based on race, colour, descent or national ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms”(Article 1). CERD had established an “international standard” for determining prejudice or bias. The petitioners were unsuccessful in overturning the death

⁷⁷ 22 Cal. 3d 620, 625 (Cal. 1978) (Newman, J. concurring)

sentence in *McClesky v Kemp* (1987) but CERD obligations echoed through appeals and criticisms of the ruling (Gise 1999 and Daniel 2011).

On June 24, 1994, the Senate voted in support of ratification 16 years after President Carter sent the treaty to the Committee for advice and consent and 28 years after President Johnson authorized signing the treaty (U.S. Congressional Records 1994).

In presenting the CERD for ratification, Senator Pell encouraged Senators to vote in favor of ratification.

The convention is an important instrument in the international community's struggle to eliminate racial and ethnic discrimination. As a nation which has gone through its own struggle to overcome segregation and discrimination, we are in a unique position to lead the international effort. Our position and the credibility of our leadership will be strengthened immeasurably by ratification of this convention --ratification, I might add, that is long overdue... Mr. President, this is a good treaty and one that the United States can be proud of ratifying. I urge all of my colleagues to support ratification of this treaty.

103rd Congress (1993-1994) June 24 1994. Mr. Pell

In 1998, President Clinton wrote Executive Order 13107 Implementation of Human Rights Treaties, restating executive branch support of human rights treaties. In the Executive Order, he called for the specific implementation of the CERD, ICCPR, and CAT treaties. This Executive Order was a strong signal of support for international human rights treaty law writing that it is the policy of the United States to commit, promote human rights, and “fully to respect and implement its obligations under human rights treaties to which it is a party, including the ICCPR, the CAT, and the CERD” (Executive Order 1998). However, the Executive Order highlights a disconnect between the branches of government in the United States. Despite the

bold claims of support, the order only explicitly applies to executive agencies (Sections 2-3) and limits its scope. Section 6. Includes language that carefully removes the United States from granting too much power to international law.

- a) Nothing in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.
- b) This order does not supersede Federal statutes and does not impose any justiciable obligations on the executive branch. (Executive Order 13107 1998).

Measuring United States Compliance with CERD

Given prior study of compliance and implementation behavior we may expect to see the United States delaying improvement of rights behavior and of associated laws and statutes related to CERD. In many important ways, the United States did delay or begrudge implementation of CERD. While the executive branch confronted reluctance to directly implement the treaty and the United States remains far from ideal in its racial discrimination practices, the United States did begin altering its behavior and its laws long before ratification of CERD in 1994. Political groups clashed over the extent of implementation of CERD via the Senate limiting implementing legislation and attaching restrictive post-commitment actions to the advice and consent of the Senate at the time of ratification.

The United States adopted numerous anti-discrimination laws during the 1960s, leading up to and following United States signature of CERD. Interestingly, numerous policies and practices in the United States worked towards racial equality soon after signing CERD.

Although improved from the 1950s, measures of racial discrimination actually worsened in the

1990s, coinciding with the time leading up to the ratification of CERD. Given the two separate times and periods of trends on issues related to racial discrimination, it is important to examine the timing around signature. In this section, I illustrate the trends in racial discrimination in the specific areas of education and interracial marriage. Both areas of education and interracial marriage come directly from Article 5 of CERD, calling for states to “prohibit and eliminate racial discrimination in all its forms” in a range of areas including equal treatment before the law, the right to marriage and choice of spouse, the right to education, and the rights to work including the protection against unemployment, and equal pay for equal work. (Article 5 a- f).

One of the most controversial and engaged elements from CERD is that involving education and schooling. Examining the area of education access and segregation in the United States serves as a way to highlight the trends of United States compliance behavior around signature and ratification of CERD.

The United States moved towards equality in education with the Supreme Court case *Brown v. Board of Education* (1954) ruling that separate but equal schools violated the US Constitution. In the years directly following the decision, “it was segregation as usual” with 99% of African Americans in the American South in segregated schools (Orfield, Frankenberg, Ee, and Kuscera 2014, 4). Following the court decision, the percentage of African American students in white majority schools in the Southern United States increased from virtually 0 to a height of almost 44% in 1988.⁷⁸ We see that around the time of United States CERD signature in 1966, the United States was at a time of dramatic moves against segregation. Figure 9 shows that between 1964 and 1968, the percent of black students in majority white schools jumped

⁷⁸ From the US Department of Education, National Center for Education Statistics, Common Core of State (CCED), Public Elementary/Secondary School Universe Survey Data for post-1991 data. 1991 and earlier data was from Orfield (1983).

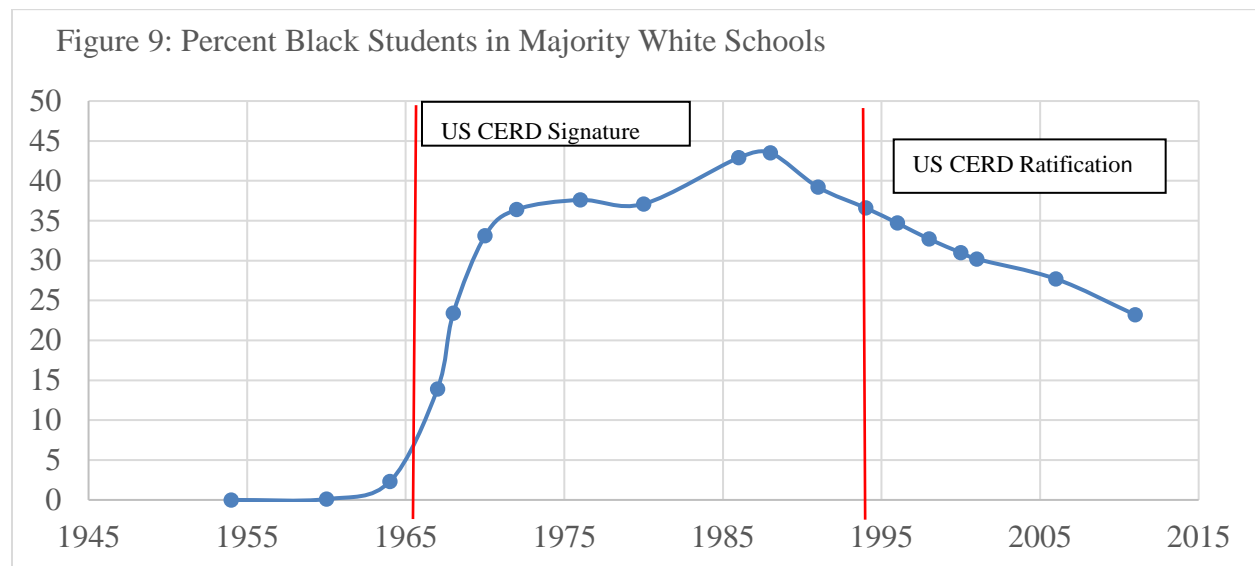
from 2.3% to 23.4%, 10 times the amount.⁷⁹ This is a substantial move in the direction against discrimination. Alternatively, the United States ratification of CERD in 1994 coincided with a time of gradual decline. The substantial change of inclusion occurred earlier during the 1960s and 1970s. Between 1991 and 1998, the percent of black students in majority white schools dropped from 39.2% to 32.7%, an almost 7% drop in only 7 years. The downward trend in the 1990s coincided with CERD ratification and the 1991 US Supreme Court case *Oklahoma City Public Schools v. Dowell*. In the case, Oklahoma City Public Schools had ceased implementing desegregation policies which involved bussing African American students from their homes to traditionally white schools in attempts to reduce travel times for students. As a result of the cession of busing, the schools once again became segregated. The question for the United States Supreme Court was whether a court injunction to desegregate schools could be removed after it initially met its goals to desegregate Oklahoma City Public Schools.⁸⁰ The Court ruled in favor of the Oklahoma City Public Schools Board of Education that it could cease bussing African Americans to traditionally white schools. The Court found that segregation in housing “was the result of private decision-making and economics, and that it was too attenuated to be a vestige of former school segregation” and that “federal supervision of local school systems [has always] been intended as a temporary measure to remedy past discrimination” (Reinquist Opinion 1991)⁸¹. The *Oklahoma City Public Schools v. Dowell* (1991) ruling opened the opportunity for schools to cease desegregation policies. This downward trend is reflected in the 1991 and post

⁷⁹ Data from this graph was listed in Table 3 of Orfield, Frankenberg, Ee and Kuscera 2014, those authors drawing from the US Department of Education, National Center for Education Statistics, Common Core of State (CCED), Public Elementary/Secondary School Universe Survey Data for post-1991 data. 1991 and earlier data was from Orfield (1983).

⁸⁰ "Board of Education of Oklahoma City Public Schools v. Dowell." Oyez. Chicago-Kent College of Law at Illinois Tech, n.d. Apr 21, 2016. <<https://www.oyez.org/cases/1990/89-1080>>

⁸¹ USSC No. 89-1080 1991 Board of Education of Oklahoma City v Dowell.

1991 percentages of black students in majority white schools in Figure 9. United States ratification of CERD occurred in 1994, in the midst of the downward trend in school inclusion.



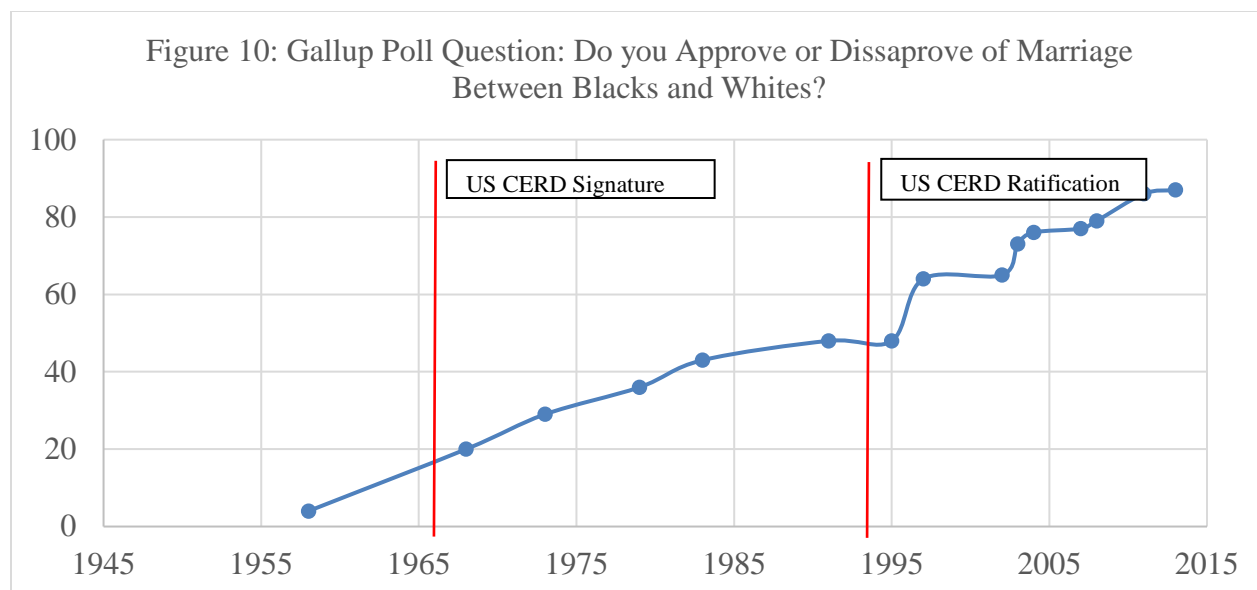
Even though 32.7% remains notably higher than the United States began post *Brown vs. Board of Education*, in measuring changes in behavior relative to CERD, or compliance, only post ratification, research on international legal commitment and subsequent altered behavior misses the earlier substantial change occurring around the time of CERD signature.

Another important right covered in CERD was the right to marriage and choosing a spouse. Allowing for interracial marriage was one of the contested issues for the United States entering into CERD. Analyzing trends in interracial marriage, in terms of actual marriages and support for interracial marriages illustrates how the United States increased rights provisions and reduced discrimination around the timing of signature. As previously mentioned, the 1967 United States Supreme Court case of *Loving v. Virginia* addressed whether Virginia's anti-miscegenation law violated the United States Constitution, specifically the Equal Protection

Cause of the Fourteenth Amendment.⁸² In the Majority Opinion, Earl Warren wrote that the Virginia law banning interracial marriage violated the constitution and had the only purpose of “invidious racial discrimination” and that “the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State.”

With the *Loving v. Virginia* (1967) ruling, the United States Supreme Court ruled on the legality of interracial marriage, aligning the United States law with the call of CERD for freedom to choose a spouse. In examining trends of actual marriages undertaken and public opinion of interracial marriage in the United States, it becomes clear that trends against racial discrimination in regards to marriage rights increased around the time of CERD signature. When asked “do you approve or disapprove of marriage between blacks and whites?” there was a 16-point increase in those approving between 1959 and 1969 (from 4% to 16%). Between the mid-1980s and mid-1990s, support remained near constant around 48% approving of interracial marriage (Newport 2013). Figure 10 visualizes Gallup polling suggesting that an even larger lead during the 1960s, estimating a 16% jump from 4% approval in 1958 to 20% approval in 1968. Looking at the data points and trends surrounding signature and ratification, the Gallup poll points to an increase in approval around signature and a constant approval rate around ratification. Between 1958 and 1968, approval for interracial marriage increased, on average, by about 1.6 % per year. Alternatively, ratification of CERD in 1994 came at a time when approval of interracial marriage had remained constant at 48% between 1991 and 1995.

⁸² Chicago-Kent College of Law at Illinois Tech. "Loving v. Virginia." Oyez. <https://www.oyez.org/cases/1966/395> (accessed April 22, 2016).



In examining earnings measures, the discrepancy between black and white Americans persists. Measures of average family wealth (Figure 11) and earnings (Figure 12) depict a worsening gap between white and black Americans. These data show a time of comparatively better equality, or at least not an extensive inequality, in these economic measures in the 1960s around the time of CERD signature and a worsening or flattened trend around the 1990s and the time of CERD ratification.

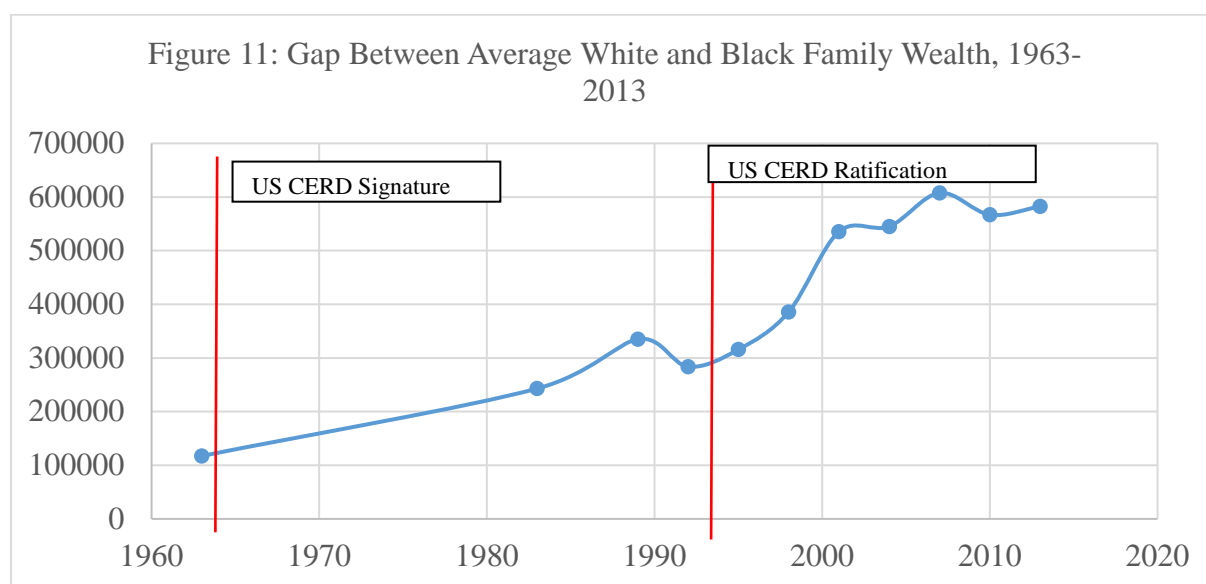
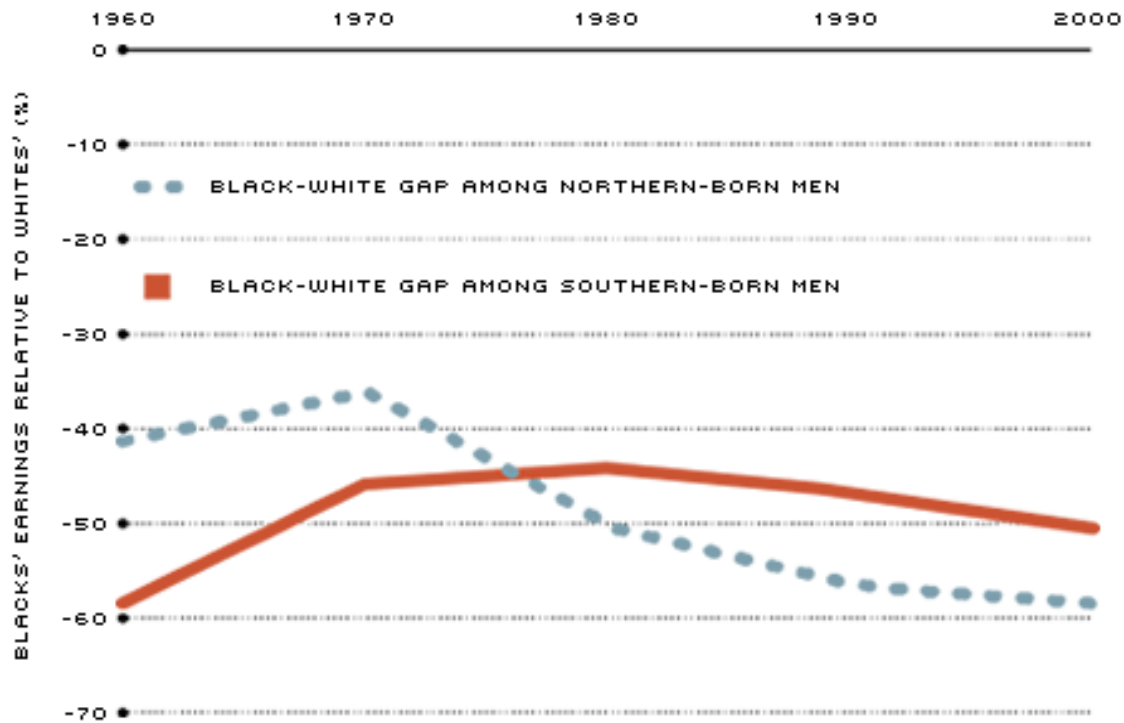


Figure 11 presents data compiled by the Urban Institute⁸³ showing the gap between the average family wealth by race. The smallest gap between white and non-white families was in 1963, with the gap between average white and black family wealth at \$117,329. The gap lessened slightly between 1989 and 1992; however, during the 1990s, the gap increased from \$283,907 in 1992 to \$535,532 in 2001. White signature of CERD occurred at a time of increasing gap, the rise was less sharp than that that occurred around the time of ratification.

Canon and Marifan (2013) draw on data distinguishing the regional relationship between earnings gaps between black and white men from the Integrated Public Use Microdata Series (IPUMS) census data. Their findings reveal a narrowing of the earnings gap between 1960 and 1970, with a trend increased gap in the 1990s and 2000s. Figure 12 from their work shows the relationship between black earnings and white earnings over time, by region. A score of 0 would mean black income reached parity with white income in that year. The data show that the Black-white gap decreased from 1960-1970 with the gap between southern born men declining from black earnings almost 60% lower than white southern born men in 1960 to about 45% lower in 1970. Between 1990 and 2000, the gap worsened for both southern and northern-born men, with the gap between norther-born black and white men at a lower point than 1960.

⁸³ The Urban Institute compiled survey data results from the Survey of Financial Characteristics of Consumers 1962, the Survey of Changes in Family Finances 1963, and the Survey of Consumer Finances 1983-2013. The data are in 2013 dollars and no comparable survey data was available between 1963 and 1983.

Figure 12: Gap between White and Black Male Earnings, by Geography 1960-2000 from Canon and Marifan 2013.



Examining several components from CERD Article 5 of right to education, right to choice in marrying a spouse, and equal pay, I find that trends in these measures, along with other measures of equality, largely coincided with a great trend towards equality around the timing of CERD signature. Signature did not cause these trends, but rather the United States executive branch supported the CERD commitment during a period of expanding racial equality and rights during the Civil Rights era. These advances and trends have not been accounted for in current human rights law scholarship based on the focus on ratification. In examining the areas of education, choice of spouse, and earnings, I find that the time of ratification in 1994 occurred during a period of slowing trends, flattening trends, or even worsening trends in the United States in the area of racial rights. Other, related measures of racial discrimination follow this

trend. For example, Bobo, Charles, Krysan and Simmons (2012) find that white Americans agreeing with discrimination in selling homes and the right to segregate neighborhood declined overall between the early 1970s (when their measurement began) and 1990. However, by 1992, these measures generally stabilized with little decline thereafter. Discriminatory attitudes declined overtime, but by the time of CERD ratification in 1994, no substantial change was occurring. Although the United States public opinion on this issue changed substantially over time and was at a high rate of acceptance in the 1990s, examining this measure around the time of ratification would result in finding a small amount of change in attitudes when in fact attitudes already shifted. These null to negative relationships are the ones scholars now would find when examining the timing of ratification.

By the time the United States ratified CERD in 1994, significant changes occurred in domestic law and policy along with public attitudes towards racial equality. Surrounding ratification, there was little shift in these practices and even worsening in these measures. By using ratification timing as a demarcating point of compliance, we are missing the significant changes occurring prior to ratification and at times capturing negative trends. Significant changes in behavior and policy did not occur around the time of ratification, but rather around the timing of signature. The executive branch was able to sign CERD during a transformative period in American politics during which public opinion and laws changed to favor more inclusion and promotion of anti-discrimination policies. Because of the legislative barriers in place to ratification, the United States was unable to ratify during this period of changing behavior. It ratified later, after the significant rights changes already occurred.

Despite the changes to United States policy in the 1960s and improvement overtime, the overall assessment of United States compliance with CERD has been negative. This assessment

is based on the remaining discriminatory gap between white and black Americans in many important areas of life. In 2014, 40 United States human rights groups filed a United Nations report on Racial Discrimination documenting areas wherein the United States has not met its obligations to CERD.⁸⁴ The death penalty is one area in which the United States is criticized for disproportionately targeting African Americans. Scholars point out the discrepancy between the international expectations of the abolishment of the death penalty and the ongoing, racially targeted practices carried out in the United States. “The divergence of the international standard for finding discrimination from the standard under U.S. law is particularly significant with respect to the racial inequalities that are associated with the application of the death penalty” (McDougall 1997, 585).

Post-Commitment Actions made by the United States

The United States made three reservations, one understanding, and one declaration to CERD at the time of ratification in 1994. The Senate Committee on Foreign Relations discussed the post-commitment actions as early as 1980 during hearings.⁸⁵ No further post-commitment actions were made. These actions drew heavy criticism from the international community and legal scholars and were viewed as “far reaching” (Meron 1985, 284). Following the long road to ratification, “the U.S. Senate, however, sought to eviscerate the domestic legal significance of these distinctions” (McDougall 1997, 584).

⁸⁴ •<http://www.civilrights.org/press/2014/CERD-Report.html>

⁸⁵ These RUDS discussed in International Human Rights Treaties: Hearings Before the Senate Committee on Foreign Relations, 96th Congress, 1st Session (1980).

The reservations were cited Articles 4 and 7 as interfering with freedom of speech, expression, and association. The United States found Articles 2, 3, and 5 problematic as the CERD called for more regulation of the private sphere than the United States considered Constitutional. The United States made a reservation to Article 22, as it wanted to consent before any case related to CERD was brought before the International Court of Justice. Through declaration, the United States deemed the treaty to be not self-executing. The understanding dealt with divisions between federal, state, and local governments. Through the post-commitment actions, the United States removed itself from legal obligations related to six out of the 25 Articles within the CERD treaty and effectively rendered it useless without domestic implementation.

The United Nations CERD Committee report in 2008 criticized the United States for failing to implement the treaty, specifically noting its interpretation of the treaty as not self-executing (CERD/C/USA/CO/6). In response to the 2008 periodic report submitted by the United States, the CERD Working Group chastised the United the States, “the United States has failed to take adequate measures, consistent with CERD Article 2, to ensure that the provisions of CERD have domestic legal effect” (US Human Rights Network 2008, 2). The Report specifically cites the United States lodging of an understanding that the treaty was non-self-executing as prohibiting domestic implementation and inability of domestic courts to invoke the provisions of CERD (UN CERD 2008, 2). The United States, “not only failed to implement the CERD, but also demonstrated outright rejection of affirmative, race-conscious measures to help remedy unjustifiable racial disparities” (Watt 2010).

United States Conclusion

The United States offered an example of a state gradually improving human rights at the same time as treaty signature. It improved practices and expanded policy after signature. Due to the legislative barriers in place in the United States these improvements all occurred prior to treaty ratification. In the case of the United States and CERD, the involvement of the Senate prolonged both the ratification and implementation processes. Despite United States domestic law of the supremacy of international law, common practice via post-commitment actions exerts the supremacy of domestic law through declaring CERD to be not self-executing. The United States improved its rights practices over time and in particular there was a period of rights improvement around the timing of signature. Signature of CERD occurred during a period of changing opinions on racial equality in the United States. Enabled by legislative barriers, opponents to CERD were able to delay treaty ratification in the Senate. By the time ratification occurred, major policy changes already took place in the United States.

CHAPTER 5

The Netherlands

States vary at how quickly they ratify international human rights treaties. Guyana signed the Convention against Torture in January of 1988 and ratified it in May of the same year, taking only 4 months between the two commitment steps. Nigeria also signed the Convention against Torture in 1988 but did not ratify until 2001, 13 years later. Guyana does not have a legislative barrier to ratification and Nigeria does. This chapter further explores the role of the domestic legislature in legal engagement with international human rights treaty law. Not only is the legislature involved in the ratification process, but in many states it is involved in the treaty incorporation process. As discussed in Chapter 2, whether or not a state approaches international law through a monist or dualist interpretation influences whether or not domestic legislation is required to implement international treaties once ratified. Dualist states require this legislative implementation, while monist states do not necessarily require additional legislation to enact treaty law into domestic law.

The Netherlands offers an example of a state taking action to improve human rights prior to ratification to align domestic policy with international agreements. Once the Netherlands ratifies international human rights treaties they become domestic law. This direct incorporation of international law creates a desire from lawmakers to be in compliance with the treaty prior to ratification. Although adhering to a different treaty-commitment process than the United States, the Netherlands offers another example of how states move to improve human rights practices following signature and before ratification. The treaty case I focus on in the Netherlands is the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). The Netherlands signed CEDAW in 1980 when it opened for signature and ratified it in 1991,

totaling an 11-year gap between the two commitment actions. This gap is close to the average amount of time the Netherlands takes to ratify international human rights treaties. On average, the Netherlands took about 8 years to ratify core international human rights treaties after opening.

In this chapter, the findings again challenge the traditional approach found in international relations of using ratification as the key point to measure behavioral change and compliance with international human rights law. The participation of the legislature delays the ratification process by enabling domestic groups opposed to human rights treaties the political opportunity to challenge the treaty via pressuring their elected representatives in the legislature. Examining the Netherlands also produces thought-provoking results about ratification delays incurred by states with direct incorporation of international treaty law.

Domestic Law on Ratification and Implementation

Domestic Law on Ratification

Domestic political actors play a large and expanding role in the treaty ratification process. A Dutch parliamentary vote is required to approve treaty ratification and a new law allows the Dutch people to call for a referendum vote on issues of domestic and international policy, including international treaty law. This law adds a new and additional domestic barrier to treaty ratification. In this section, I discuss the longstanding role of the parliament in the Netherlands and implications of the new referendum vote on international treaty ratification. In discussing these policies, this section highlights the expansionary role of domestic institutions and groups in international legal decisions over time.

In the Netherlands, the head of state alone cannot ratify international treaty law. Ministers from the executive branch can sign a treaty, but parliamentary approval is required for ratification.⁸⁶ Article 91 Section 1 of the Dutch Constitution outlines the process for treaty ratification, “The Kingdom shall not be bound by treaties, nor shall such treaties be denounced without the prior approval of the Parliament. The cases in which approval is not required shall be specified by Act of Parliament.”⁸⁷ These provisions of the 1983 Constitution came into effect in 1994, but maintained the Dutch law on treaties in place at least since the 1953 Dutch Constitution (Klabbers 1995, 629). The 1989 State Law on the Approval and Promulgation of Treaties (Rijkswet goedkeuring en bekendmaking verdragen) was submitted to Parliament in 1989 and amended the standing Dutch Constitution of 1983. The 1989 Law maintained the role of parliament in the treaty ratification process and expanded parliament’s role prior to ratification approval. The new law mandated that the Dutch Parliament be informed about treaties in the negotiation process (Klabbers 1995, 630). While the 1989 Law did not require details about the negotiations taking place, the goal of the law was to ensure that Parliament was made aware of forthcoming treaties and the broad content therein.

Human rights organizations criticize the slowness with which the Netherlands ratifies international treaties. For example, the Netherlands has been criticized for the lengthy time in ratifying the Convention on the Rights of Persons with Disabilities (CRPD). The treaty opened for signature in 2007, at which time The Netherlands signed CRPD. However, the Dutch Parliament did not vote to ratify until January 2016.⁸⁸ Dutch rights organization Coalition for

⁸⁶ <http://www.government.nl/issues/treaties/the-difference-between-signing-and-ratification>

⁸⁷ Dutch Constitution Article 91(1)

⁸⁸ <http://www.nltimes.nl/2016/01/21/netherlands-to-finally-get-more-accessible-for-disabled-people/>. The vote in favor of ratification occurred 21 January 2016, formal ratification is not yet registered with the United Nations Treaty Database as of February 10, 2016.

Inclusion drafted a critical memo detailing the lack of Dutch ratification of the CRPD and entitled it “Position Paper on the CRPD Ratification Process in the Netherlands: Unwilling or Just Really Slow?”⁸⁹ Labour MP Otwin van Dijk commented on the timing of ratification: “The Netherlands will today become one of the last countries to ratify the treaty. It is about time.”⁹⁰ Divisions in parliament over the extent to which businesses would be required to change their facilities to become more accessible to persons with disabilities prolonged the ratification process and delayed the vote.⁹¹ Because of the requirement of parliamentary approval for treaty ratification, domestic groups favoring business rights were able to mobilize in opposition against the treaty and pressure their representatives to delay the vote.

In addition to the Netherlands’ standing check of parliamentary approval for treaty ratification, the Dutch public can delay or reject treaty ratification. Despite overwhelming legislative support for the European Constitutional Treaty, the Dutch public rejected its ratification in 2005. The European Constitutional Treaty was supported by the Christian Democrats, the Liberals and Democrats ’66, along with two opposition parties the Labour Party and GreenLeft totaling 85% of the seats of the lower house of the Dutch Parliament (Harmsen 2005). Despite this overwhelming parliamentary support, the Dutch electorate voted against the treaty with 62.8% voting in opposition and 38.4% voting in support.⁹² The U.S. Council on Foreign Relations cited Dutch concerns about immigration, Turkey, quality of life issues, economic stagnation, and power sharing worries as motivating factors in opposing the Treaty.⁹³

⁸⁹http://www.vnverdragwaarmaken.nl/vnverdragwaarmaken/images/vnhome/Position_paper_to_MrsPillay_on_the_CRPD_in_the_Netherlands_sept_25_2012.pdf

⁹⁰ As quoted in <http://www.dutchnews.nl/news/archives/2016/01/dutch-vote-for-disabled-access-in-public-buildings/>

⁹¹ <http://www.nltimes.nl/2016/01/21/netherlands-to-finally-get-more-accessible-for-disabled-people/>

⁹² <http://www.theguardian.com/world/2005/jun/02/eu.politics>

⁹³ <http://www.cfr.org/france/european-union-french-dutch-referendums/p8148>

In this case, the domestic opponents to treaty law did not have to convince the legislatures of their positions, they had the ability to take treaty rejection into their own hands.

The Netherlands amended its domestic law to allow for popular referendums to challenge recently adopted laws or treaties. The July 2015 law allows citizens to prompt a non-binding referendum on new legislation passed. Groups or individuals calling for a referendum must collect a minimum of 300,000 Dutch signatures.⁹⁴ In September 2015, the Dutch Euroskeptics created a petition to halt Ukraine's European integration, gathering over 400,000 signatures. The petition prompted a domestic referendum held in April 2016 addressing whether or not to reverse The Netherlands' ratification of the EU-Ukraine Association Agreement.⁹⁵ A January 2016 poll found that over 50% of individuals polled were "certain" to reject the agreement.⁹⁶ Sixty-one percent of Dutch voters rejected the referendum, blocking the removal of trade barriers with Ukraine.

Given the non-binding nature of the referendum, Dutch leaders responded cautiously about what the vote meant. Prime Minister Rutte responded to the vote saying that ratification "cannot go ahead without discussion."⁹⁷ Integration of Ukraine is a politicized issue for many Dutch citizens, especially in terms of trade and movement. Dutch commentators warn against viewing the referendum as purely about citizens' opposition to Ukraine joining the EU. Rather, they claim that the EU-Ukraine Association Agreement was simply the "first eligible one (agreement) after the new referendum law came into effect."⁹⁸ The Dutch may continue the use

⁹⁴ <https://euobserver.com/beyond-brussels/130446>

⁹⁵ <http://sputniknews.com/politics/20160111/1032932512/netherlands-referendum-ukraine-analysis.html>

⁹⁶ <http://www.politico.eu/article/poll-netherlands-ratification-association-agreement-ukraine/>

⁹⁷ <http://www.bbc.com/news/world-europe-35976086>

⁹⁸ <https://euobserver.com/beyond-brussels/130446>

of referendums votes on treaty agreements, in particular if the April 2016 vote urges the reversal of the Dutch treaty agreement.

Even if the referendum vote concerning Ukrainian integration with the European Union does nothing to alter the Netherlands' commitment to the treaty, the new law allows an additional barrier to treaty ratification for the Netherlands. The referendum law may prolong future treaty agreements even further should the Dutch negotiators see the referenda as a serious threat to commitment and implementation in the long run. The Consultative Referendum Law applies to domestic law and E.U. treaties, but excludes topics of the constitution, monarchy, the budget, and treaties that apply to the Dutch Caribbean.⁹⁹ Although untested thus far with international human rights treaties, these treaties fall within the approved topics for referendum. International human rights laws frequently do not apply to the Dutch Caribbean. The Netherlands often excludes the Netherlands Antilles from treaty obligations as well. For example, in 1978, The Netherlands submitted a territorial application action related to the ICCPR, stating that "The Kingdom of the Netherlands regards the Netherlands and the Netherlands Antilles as separate territories of a State for the purpose of this provision."¹⁰⁰

The longstanding requirements of parliamentary approval coupled with the supremacy of international law makes treaty ratification a difficult and lengthy process in the Netherlands. The Netherlands signed the core United Nations human rights treaties, on average, less than one year after the treaty opened for signature. Ratification took years longer. The Netherlands ratified treaties, on average, 7.7 years after the treaty opened for signature. This commitment timing reflects an average gap of 6.7 years between treaty signing and ratifying. Table 3 lists The Netherlands' commitment timing of the core United Nations human rights treaties.

⁹⁹ <https://www.meerdemocratie.nl/dutch-consultative-referendum-law-overview>

¹⁰⁰ United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

Domestic Law on Implementation

The Netherlands' monist interpretation of international law impacts its approach to United Nations human rights treaty law. The knowledge that the international treaty will take precedence over standing domestic policy can prolong the ratification process and affect how parliamentarians and international negotiators approach the treaty law and ratification process.

Upon ratification and entry into force, international law becomes automatically incorporated into Dutch law, without a separate action required. Dutch law has been explicitly monist in this respect since the 1953 amendments to the Dutch Constitution. Prior to the changes, the monist tradition applied via well-established customary law which "had already found recognition in scattered legislative provisions" (van Dijk and Tahzib 1991, 418). If there is a discrepancy between domestic and international law, the international law takes precedence. The Netherlands makes efforts to change domestic law to align with international treaty law prior to ratification, reconciling any existing discrepancy between the two levels of law. Despite domestic and international criticism for not ratifying the CRPD, the Netherlands continued to delay ratification. One reason for the delay was that the government wanted to change domestic policy prior to ratification. The European Association of Service Providers for Persons with Disabilities, a leading disability NGO in Europe, confirmed this Dutch approach in regards to the CRPD. "Even though the (Dutch) coalition government decided to ratify the Convention, the debate from December 2015 did not finish...the Dutch government explains this by arguing that there are still plans to be put in place before the ratification . . . willingness to discuss concretely how they intend to implement it before ratification." ¹⁰¹

¹⁰¹ <http://www.easpd.eu/en/tags/crpd-ratification-netherlands-policy-debate-eu-presidency>

During negotiations, Dutch diplomats are keenly aware of the implications of their monist approach to international law. Schermers addressed the unique seriousness with which Dutch diplomats approach international legal negotiations, “Dutch negotiators of treaties sometimes feel it as a burden that the treaty which they conclude becomes part of domestic law. Negotiators from other countries may lightheartedly accept all sorts of treaty obligations which are not subsequently incorporated into their domestic legal systems and therefore become dead letters, whilst a Dutch negotiator always has to take into account that treaty obligations may be invoked in court” (Schermers: 1987: Supra note 19, p 112).

In courts, individuals successfully argued for the supremacy of international legal jurisprudence over Dutch domestic law. Individuals can invoke provisions of international treaty law before a Dutch court and such treaty provisions would have precedence over Dutch domestic law, if there are inconsistencies between the laws. Article 94 of the Constitution reads “Legislation in force within the Kingdom shall not be applicable if such application is in conflict with the provisions of treaties that are binding upon all persons or of decisions by international organizations.” Individuals have successfully invoked international law over Dutch law. During the 1970s and 1980s, individuals lodged cases against the Netherlands in the European Court of Human Rights.¹⁰² The Court found in each case that the Netherlands violated the European Convention on Human Rights. By invoking international law, the plaintiffs were able to successfully win cases against the Netherlands. Even when the Netherlands was not taken to the European Court of Human Rights, case rulings against other states created precedence incorporated into Dutch domestic law (e.g. the Van Mechelen case in 1997).

¹⁰² See for example Engel (1976), Winterwerp (1979), X and Y (1985), Benthem (1985), Berrab (1988), and Kostovski (1989)

In addition to Dutch courts, other Dutch institutions also invoke the dominance of international human rights law over domestic law. For example, the National Ombudsman of the Netherlands used provisions from the International Covenant on Civil and Political Rights (ICCPR) to assess domestic human rights compliance (Reif 2013, 144). These rulings and the practice of using other states' rulings as precedence reveals the consistency with which the Netherlands accepts international law as supreme to domestic law.¹⁰³

Treaty Case: The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was created in 1979 by the United Nations to specifically establish and protect the rights of women and girls. The treaty covers rights protections across all areas of life including political, social, economic, and family-level rights of women. As early as 1946, the United Nations was interested in establishing and reporting on women's rights. As a result, the United Nations created the Commission on the Status of Women. The topic of women's rights was broached once again in 1963 when the General Assembly asked the Economic and Social Council to draft a declaration on the elimination of discrimination against women (UNGA res. 1921). After much delay during the 1960s, renewed interest in a women's rights convention coincided with the International Women's Year in 1975. After numerous draft conventions, the finalized

¹⁰³ This is not to argue that groups within the Netherlands or the Dutch government itself does not contest the applicability of international law in domestic cases, but the history does reveal the success with which international law is cited and applied as the dominant set of laws over Dutch domestic law.

convention was presented to the General Assembly in 1979.¹⁰⁴ CEDAW defines discrimination against women in Article 1:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The Netherlands was extensively involved in the creation of CEDAW and expressed the importance of expanding women's rights coverage during drafting negotiations: "The Netherlands had played a large role in formulating CEDAW and advocating its adoption in 1979" (Oomen 2010, 182). Dutch Secretary of State J.G. Kraaijeveld-Wouters spoke on behalf of The Netherlands at the World Conference of the United Nations Decade for Women in 1980 advocating for more work on the expansion of women's rights, and women migrants' rights in particular.¹⁰⁵ The Netherlands called for an expanded opportunity for organizations and individuals to lodge complaints via CEDAW and a larger role for NGOs (Rehof 1993, 228). Despite this involvement, the Netherlands did not ratify CEDAW right away. This delay comes as somewhat of a shock given the Netherlands' reputation as a human rights respector and advocate. As evidence in this section shows, agreement on human rights does not necessarily come easily even in the most progressive and internationalized of states.

¹⁰⁴ Note for example the 4 draft conventions presented to the General Assembly between 1976-1979 (E/5909-E/CN.6/608), Economic and Social Council Resolution 2058(LXII), General Assembly resolution 32/136, and General Assembly resolution 33/177 all containing drafts of the Convention on the Elimination of all forms of Discrimination against Women.

¹⁰⁵ Excerpt of statement by Ms. J.G. Kraaijeveld-Wouters July 17 1980, World Conference of the United Nations Decade for Women, Bella Center, Copenhagen, Denmark accessed through the Audiovisual Library of International Law <http://www.un.org/law/avl/>.

Why did it take so long? Ratification of CEDAW took the Dutch government 11 years, from the time of signature in 1980 until ratification in 1991. Scholarship, parliamentary debates, United Nations Committee memos, and NGO activity point to domestic tension pertaining to Articles 5a, 10c, and especially Article 7 of the CEDAW treaty. Because the Netherlands requires domestic legislative approval for treaty ratification, legislative agreement on the content of the treaty was imperative. Dutch law requires a simple majority vote in its Parliament (both houses) and 2/3rd majority if the treaty would require amending the Constitution.¹⁰⁶ Fundamentalist, conservative Christian parties in Parliament opposed these three Articles of CEDAW in particular and delayed the Dutch ratification. Conservative Christian parties constituted 46% of the Lower House seats following the 1989 election and were able to pose a credible threat to reaching a ratification vote.¹⁰⁷ The 1994 election resulted in a loss of seats by these groups. The Christian Democratic Appeal (Christen Democratish Appel) Party constituted 42% of the Lower House seats in 1989 and only 23% in the 1994 election.

Articles 5a and 10c

Conservative groups in the Netherlands took issue with several of the articles in CEDAW calling for the equality between sexes across all facets of life. Groups targeted Articles 5a and 10c in particular. Article 5 calls for states to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (CEDAW Article 5a). Article 10 addresses

¹⁰⁶ Revision of the Constitution. Chapter 8 Article 137. Accessed at <https://www.rechtspraak.nl/SiteCollectionDocuments/Constitution-NL.pdf>.

¹⁰⁷ This percentage is the total of the CDA, CU, SGP, RPF, and GPV party seats as identified as conservative, Christian groups by the Lower House, Tweede Kamer. Election results come from Inter-Parliamentary Union – Netherlands Tweede Kamer der Staten-Generaal accessed at http://www.ipu.org/parline-e/reports/2231_arc.htm

discrimination in education and specifically calls for the elimination of “any stereotyped concept of the roles of men and women at all levels. . . by encouraging coeducation. . . which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods” (CEDAW Article 10c).

The contention over equality, role of the sexes, and role of the government resulted in debates and delays in ratifying CEDAW. Holtmaat points to the difficulty in conservative groups accepting equality between the sexes, “It was the view of some political parties that government should avoid seeking to give direction about the allocation of roles between men and women. For this reason the small (fundamentalist) Christian parties voted against the Ratification Act” (Holtmaat 2004, 67). Christian party Parliament Members criticized the implications of CEDAW’s Article 5a and argued that this “undermined the natural order of the family and led to divorce.” The parliamentarians questioned the role of law at any level in determining the allotment of roles at the family level, particularly when law questioned what they believed to be naturally assigned gender roles. Fundamentalist Christian parties asked “which legal principle in a democratic state based on the rule of law gave the government the right to change men’s and women’s social and cultural patterns of behavior.”¹⁰⁸

Both Articles 5a and 10c connected women’s rights to broader social issues. Article 10 linked the role of education in forming and reinforcing gendered roles. Article 5 then connected gender stereotypes with violence against women. Bringing the discussion to violence against women caused a delay in ratification in that the Dutch government “expressly conceded that there is a connection between gender stereotypes and violence against women, and that the

¹⁰⁸ TK 1984-1985, 18 950 (R 1281), VV nr. 4, pg. 14 as quoted in Holtmaat 2004 pg 68

Convention entails an obligation to put an end to this violence.”¹⁰⁹ These connections upset conservative Christian groups that continued to perpetuate gender stereotypes and roles (Holtmaat 2004: 67).

SGP and Article 7

Along with the broader approaches to equality in place in articles 5a and 10c, the specificity in Article 7 especially drew criticisms from the conservative Christian parties. Tension surrounding Article 7 of CEDAW posed a unique problem for reaching ratification consensus and resulted in delayed ratification. The SGP (Staatkundig Gereformeerde Partij or The Reformed Political Party in English) contested the political inclusion of women in the Article calling for the end of discrimination in politics. In this section, I provide a background on the SGP and its role in prolonging the ratification process of the CEDAW.

The SGP is largely constituted by the reformed Protestant Dutch. The orthodox and conservative element of the reformed Protestants believe that women have the primary role of tending to the children and the house. The SGP founder Gerrit Hendrik Kersten wrote about women in 1922 “Her destiny, her vocation, her passion lies at home. These are the women that we honour after God’s word, as the ones to build houses. And we despise the woman who withdraws from her house, and seeks life outside in the public sphere.”¹¹⁰ With this approach to women, the SGP established a position that placed women squarely out of the public sphere and withdrawn from public participation. Many women forgo voting as they understand voting as “a

¹⁰⁹ Documents of Parliament: TK 1984-1985, 18 50 (R 1281) VV, nr. 4, 14 and TK 1986-1987, 18 950 (R1281), MvA, no. 6, 28 as quoted in Benninger-Budel ed. 84.

¹¹⁰ As quoted by the Reformatorisch Dagblad, “Positie van vrouwen in SGP” 21 April 2006 and translated by Oomen 2010.

man's task", while that of a woman is to "counsel . . . their husbands . . . who cast a vote for the family as a whole" (Oomen, Guijy, and Ploeg 2010, 164). While SGP did not protest women's right to vote in the Netherlands, the party argues that it goes "against God's will, as expressed in the Bible, for women to occupy a political post or run as candidates."¹¹¹

The SGP consistently holds between 1 and 3 seats in the Lower House (Tweede Kamer) of the Dutch Parliament since the party's creation in 1918. Of the past seven elections covered by the European Election Database, the SGP maintain between 1.56% and 2.09% of votes in parliamentary elections. The Lower House consists of 150 members. When the SGP holds two seats, as it currently does, the party still only constitutes 2% of all parliamentary members. The SGP refuses to participate and cooperate with any cabinet and is described as a "testimonial party." The SGP does not seek to join governing coalitions but rather seeks to vocalize its orthodox positions on legislation.¹¹² Despite this small size, the SGP was able to take its criticisms of CEDAW to the parliamentary floor and delay ratification.

Article 7 of CEDAW reads:

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

¹¹¹ <http://womensenews.org/2014/03/un-pact-leads-dutch-woman-political-victory/>

¹¹² http://www.nsd.uib.no/european_election_database/country/netherlands/parties.html

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country. (CEDAW Article 7)

With this position in opposition to Article 7 of CEDAW, the SGP sought to ensure it would not be required by the Netherlands to allow women to run for public office. The Dutch government refused the SGP request to lodge a reservation to CEDAW citing a clash between domestic practices and the international standard (Oomen, Guijt, and Ploeg 2010, 166). While the Dutch government did ultimately reject the inclusion of a reservation, a discussion of incorporating a reservation delayed ratification. “The ratification process had taken a long time, and at different stages it had debated whether substantial reservations to particular articles of the convention were desirable, but in the end the convention had been ratified without any reservations...” (CEDAW/C/SR.234, 3).

Implementation of CEDAW

Following CEDAW signature, the Netherlands moved towards implementing the treaty prior to the point of ratification. The Netherlands was actively working toward improving gender equality in the time between signature and ratification. Scholars recognize the Dutch desire to implement prior to ratification as an important explanation for the delay in ratification: “The main reason for this time lapse rests in the initial idea of the government that the Dutch situation, upon accession, should be fully in compliance with the demands of the Convention” (van den Brink 2013, 483). Regardless of resistance to incorporate some aspects of the treaty, overall the Netherlands implemented CEDAW. The Committee on the Elimination of All Forms of Discrimination Against Women complimented the Netherlands for its implementation of CEDAW overall: “The Committee commended the State party for...undertaking such

conscientious efforts in legislation as well as other measures, first before ratifying the Convention, and secondly for its implementation” (Committee on the Elimination of Discrimination against Women 2010, 2). Through a number of policies, court references, and legislative discussion, the Netherlands documented support for CEDAW and its principles during the intervening years between signature and ratification.

New and amended policies in the Netherlands promoted CEDAW and its principles following treaty signature. Notably, the year following signature, the Netherlands amended the Equal Treatment in Employment (Men and Women) Act (Wet gelijke behandeling mannen en vrouwen, WGB). In 1980, the Act was changed to comply with the principle of equal treatment for men and women. This implemented Article 2 (a) in CEDAW and followed from Directive 76/207. In 1991, the Netherlands passed the Childcare Act (Wet Kinderopvang) after pressure from the Minister of Health and Welfare (Widener 2006). The Act moved away from viewing men as the sole earners in the family unit with women as primary caregivers of children (Lauwers 2007).

Following signature, the Netherlands promoted women’s rights and CEDAW in its territories. As a result of Dutch government pressure during the 1980s, St. Maarten began observing International Day for the Elimination of Violence against Women (Kingdom of the Netherlands 2014, 142). It is of note to highlight the Netherlands spreading women’s human rights celebrations and norms to its territories. On other occasions, the Netherlands excluded its territories from its human rights law obligations via the treaty action of territorial application. An example of the Netherlands excluding its territory from treaty provisions is its 1978 ICCPR

Territorial Application of the Netherlands Antilles to Article 25(c) writing simply, “the Kingdom of the Netherlands does not accept this provision in the case of the Netherlands Antilles.”¹¹³

The Dutch Supreme Court drew on international treaty law to support women’s rights. In a 1988 Dutch Supreme Court Case, the Court ruled that it was discriminatory against women and in conflict with international human rights law for a child born to automatically take the father’s name (Kingdom of the Netherlands, 151). This supports Article 16(1) (g) of CEDAW covering the right to choose a family name.

The Netherlands contested the extent to which CEDAW was directly implemented: “A third concern of the CEDAW Committee that the Dutch government seems unwilling to accept is in regard to the direct effect of the Convention provisions in the Dutch legal system” (van den Brink 2013, 491). Prior to ratification, in 1984, the Dutch Parliament discussed that CEDAW article 2d, article 7, article 9, and article 11 having direct effect regarding equal pay.¹¹⁴ The Dutch High Court ruling of 2010 cemented that treaty provisions superseded domestic constitutional law in the Netherlands.

The Netherlands drew on the CEDAW in court cases and within parliament. However, compared with Dutch domestic engagement with other human rights treaties, reference to CEDAW lags behind: “In general, only in a very few court cases is reference made to CEDAW, compared with the International Covenant on Civil and Political Rights” (Lauwers 2007, 16). Approximately 20 Dutch court cases referenced CEDAW between 2000 and 2010, this compares with 148 cases specifically referencing ICCPR in 2006 alone. The ICCPR is also referenced more in Parliament (Lauwers 2007, 17). Van den Brink discusses the practice of Dutch courts to avoid citing CEDAW: “The absence of the CEDAW in legal practice is striking, in particular

¹¹³ United Nations. International Covenant on Civil and Political Rights: Full Details. 63.

¹¹⁴ Dutch Parliamentary Papers, House of Representatives, 1984-1985, 18 950.

compared with the more recent CRC, which, even prior to its ratification was invoked in the courts” (Van den Brink 2013, 495). Between 1995 and 2013, the CEDAW was referenced 207 times in parliamentary debates, bills, etc. (Van den Brink 2013, 502). ICCPR and the European Convention on Human Rights were riled on more heavily (Van den Brink 2013, 509). The issue with the courts and parliament in the Netherlands was not a rejection of the role of international law within domestic courts and law, but rather a preference for broader international treaty law found in the ICCPR and regional law of the EU.

Dutch CEDAW Ratification

Ultimately, in 1991 the Netherlands did ratify CEDAW. The Netherlands was able to ratify the Convention without any treaty reservations, removing the Netherlands from specific legal obligation to certain articles, which it sought to avoid. Initially, the Netherlands included reservations within the Bill of Ratification of CEDAW; however, it notified the Committee that the reservations were later removed (Lijnzaad 1995, 351). The Netherlands sought to straddle the international obligation to allow women to represent political parties and appeasing the SGP. This allowed ratification to occur, but would cause implementation and compliance problems. To support implementation of CEDAW into Dutch domestic law, the Approbation Act of 1991 requires the Minister of Social Affairs and Employment to report to Parliament every four years on the status of CEDAW implementation (Van den Brink 2013, 487). The Netherlands convened a CEDAW Committee and in 1994 held the first hearing to study the treaty. The parliament was to be informed to “stimulate further implementation” (Roernik and van Dijk 1998, 124).

Measuring Dutch Compliance with CEDAW

As a result of the Dutch government striving to incorporate and implement elements of CEDAW prior to ratification, the overall assessment of CEDAW compliance has been positive from both the United Nations and NGOs. The fourth country report of CEDAW, for example, highlighted how the Netherlands continued to increase and enhance the role of women in bilateral cooperation (CEDAW/C/NDL,10), an area in which female participation continues to lag behind that of their male counterparts. In contrast, Great Britain is criticized for the lack of women involved in diplomacy, with only about 22% of all senior positions in its 260 diplomatic missions filled by women (Rahman-Fugueroa 2012, 1).

Controversial aspects of CEDAW remain contested within the Netherlands. The international community has maintained the need for the Netherlands to fully implement CEDAW as it pertains to Article 7. The anti-women's rights stance of the SGP in respect to the CEDAW convention continued beyond ratification. As noted in a 2010 memo from the Committee on the Elimination of Discrimination against Women noting the status of the treaty in the Netherlands, the Committee remained aware of the SGP discrimination. Point 13 of the memo specifically mentioned the SGP in criticizing the Netherlands for not fully applying the terms of the treaty "in the domestic legal order" and should "adopt measures against discrimination including within the political party SGP and to provide for domestic remedies for alleged violation of any rights guaranteed to individuals by the Convention" (2010, 3). On April 9, 2010, the Dutch High Court ruled that in excluding women from the electoral list of a political party the SGP was in violation of CEDAW. The court ruled that "the prohibition of discrimination outweighs, in so far as it guarantees the franchise of all citizens...other constitutional rights involved" (Baudet 2012, 112).

The examination of CEDAW reveals that Dutch practice is to work towards incorporation prior to ratification. This incorporation practice coupled with the delay in ratification caused by the SGP group utilizing the legislative barrier to ratification, points towards the signature point rather than ratification as an important marker of altered behavior. By the point of ratification, domestic legislation was updated to align with the standards called for in CEDAW. I next examine several measures of women's rights in the Netherlands, noting the trends around the points of signature and ratification. These trends highlight the practice of the Netherlands of signing CEDAW at a time of rights improvements and ratifying at a later point when major changes of improvements had already occurred, or, at times, ratifying at a point of decreased rights recognition.

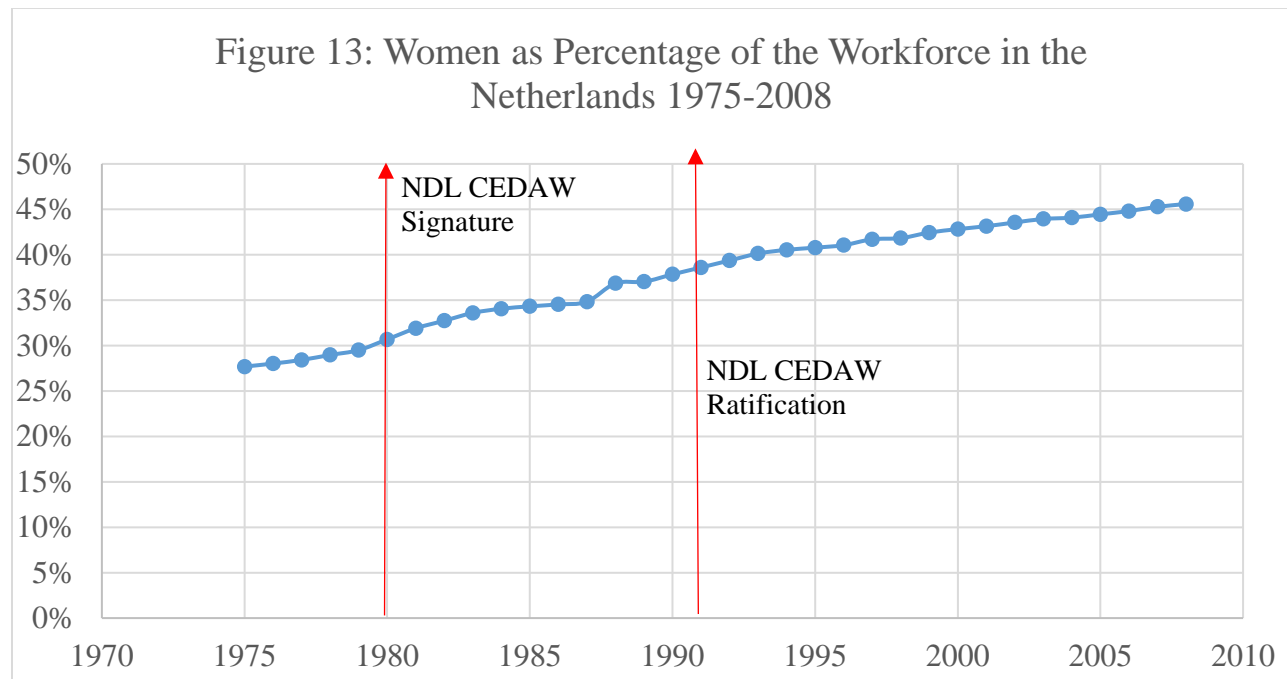


Figure 13 charts the amount of women, as a percent, comprising the Dutch workforce between 1975 and 2008. The data comes from the International Labor Organization labor statistics and includes all public sector jobs. The years 1975 to 1987 come from official

estimates and 1988-2008 come from the Labour Force Survey.¹¹⁵ Overtime, women as a percentage of the workforce has greatly increased, rising from about 28% of the workforce in 1975 to about 46% of the workforce in 2008. Women increasingly constituted the workforce after signature and ratification of CEDAW. However, the rate of change differed between the two periods. In the 5 years following signature, the percentage of women in the Dutch workforce increased by about 4%. This compares with the 5 years following ratification, wherein the percentage of women in the Dutch workforce increased by about 2%. In examining the trends in women's inclusion in the workforce only post-ratification, we miss the greater inclusion achieved post-signature.

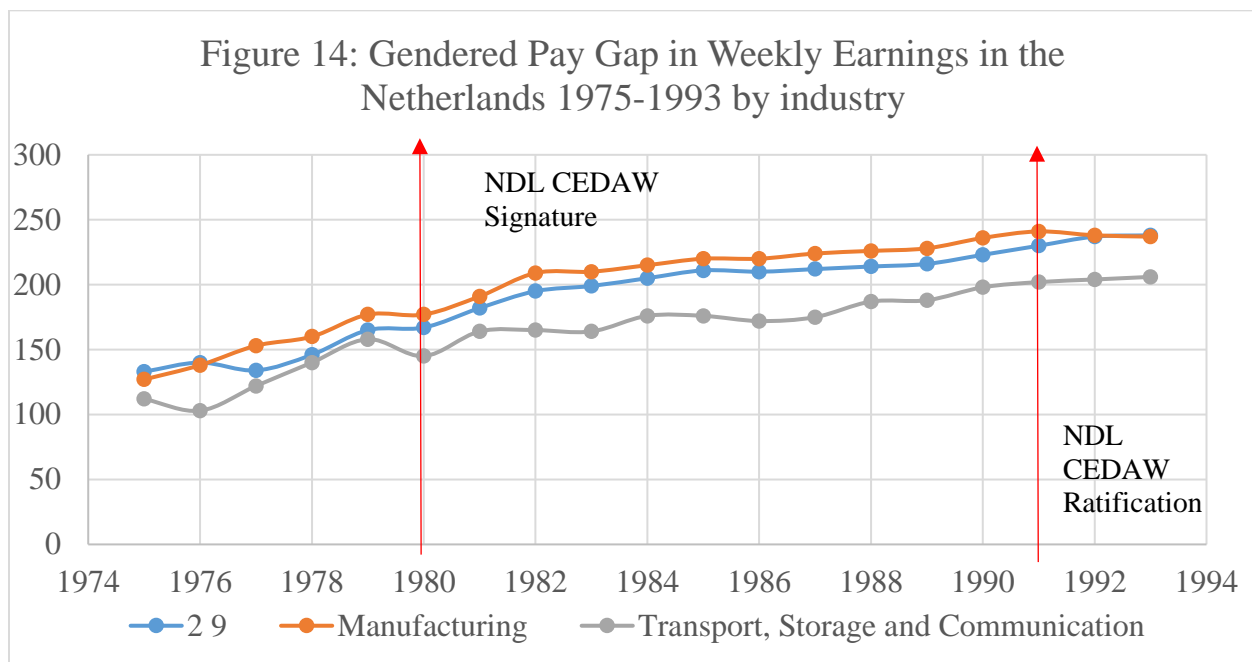


Figure 14 depicts the gendered pay gap between male and female earnings in the Netherlands 1975-1993. The data comes from the International Labor Organization. Earnings are calculated in Euros per week. These were the only three comparable industries available for

¹¹⁵ Data available for the Netherlands at <http://laborsta.ilo.org/STP/guest> accessed May 11 2016.

this time. In examining the gendered pay gap in the Netherlands, there has actually been a steady increase in the gap overtime.

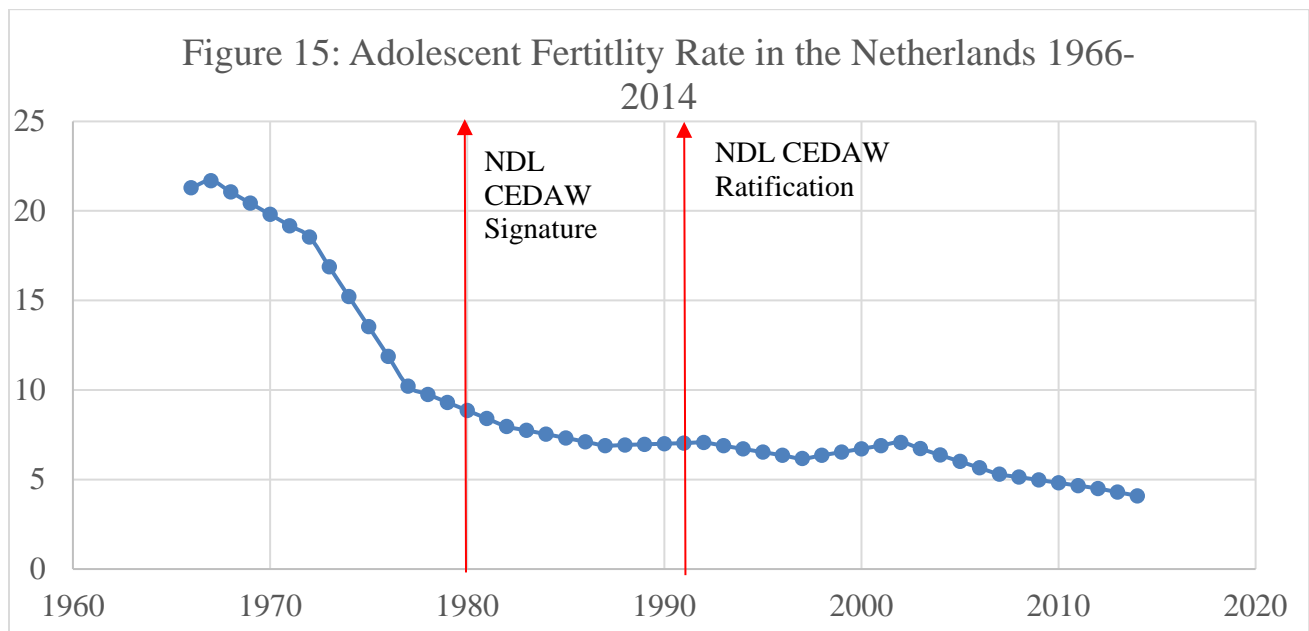


Figure 15 shows the adolescent fertility rate in the Netherlands 1966-2014. This number is the births per 1,000 women ages 15-19 and comes from the World Bank World Development Indicators.¹¹⁶ Teenage pregnancies declined overtime in the Netherlands from about 21 births per 1,000 women ages 15-19 in 1966 to about 4 births per 1,000 women ages 15-19 in 2014. This is a great drop in teenage pregnancies in the Netherlands and is reflective of access to and availability of contraception. In only examining the time surrounding ratification, we miss some of this accomplishment. In examining the 5 years prior and post ratification, the adolescent fertility rate in the Netherlands declined from about 7.1 births per 1,000 women in 1986 to 6.3 births per 1,000 women in 1996. In comparison, a much greater change in births occurred in the 5 years prior and post signature with about 13.5 births per 1,000 in 1975 dropping to about 7.3 in 1985. While both periods are characterized by a decline in teenage births, the rate of change is

¹¹⁶ Data accessible at <http://databank.worldbank.org/data/reports.aspx?source=2&country=NLD&series=&period=#>

much greater surrounding signature. In only examining the change before and after ratification, it would appear that there had not been a significant decrease in adolescent births in the Netherlands. That finding would fail to reflect the increased access to contraception and other markers of increased respect of women's rights in the Netherlands.

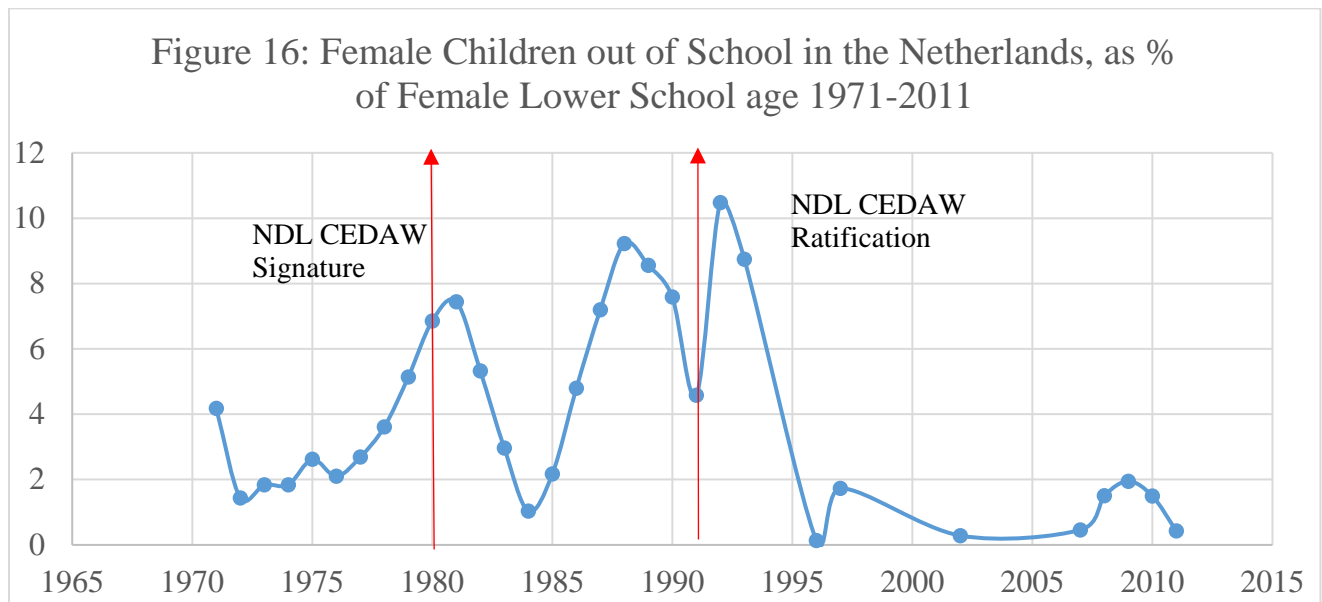


Figure 16 depicts the amount of adolescent females out of school as a percentage of all female lower school aged children from 1971-2011. Data from this graph comes from the World Bank World Development Indicators. This data captures the inclusion of girls in the Dutch educational system. Unlike the other measures of women's rights, this measure fluctuated greatly between the times examined, 1971-2011. Although there were peaks and valleys in the percentage of female children out of school in the Netherlands, the data still point to the importance of examining the signature point of international legal commitment. In looking at the years following signature, the data reflect a decline in female children out of the school system for the next 4 years. The years immediately following ratification, in contrast, capture an increase in female children out of the school system. In fact, in 1992, 2 years post-ratification, the amount of female children out of the school system, as a percentage of female school aged

children reached its all-time high, for the time examined, at about 10% of all school aged females failing to be in school.

Examining several women's rights elements from CEDAW, right to equal education (Article 10), right to equal pay and employment (Article 11), and freedom to decide freely on the number of children (Article 16(e)) I find that trends in these measures generally coincided with a trend towards greater equality and lower discrimination against women around the timing of CEDAW signature. The data highlight the result of the executive in the Netherlands signing on to the CEDAW at a time of rights expansion. The trends in women's rights also reflect the work of the Dutch parliament to meet standards of the CEDAW prior to ratification. These two forces, that of signing at a time of support for women's rights and the legislature working to align domestic policy with international law, contributed to improved rights occurring around and soon after signature rather than at the point of ratification. The above graphs reflect this process.

By the time the Netherlands ratified CEDAW in 1991, significant changes already occurred in domestic law, policy, and practices in regards to women's rights. Examining measures of women's rights reveal that at the time of ratification, rights trends either marginally improved, plateaued, or even worsened post-ratification. This finding from the above graphs holds consistent with the findings of previous scholarship examining the relationship between ratifying international treaty law and compliance. As these studies conclude, here too, I find that there was not an overall trend of rights improvements following ratification of the CEDAW in the Netherlands.

Post-commitment Actions

The Netherlands lodged 33 post-commitment actions to CEDAW between ratification in 1991 and 2010. The largest spike in post-commitment action activity was at the time of ratification when the Netherlands lodged 12 objections to reservations. Only two of the 33 actions were not objections, a declaration in 1991 and a communication in 2000.

The majority of the Netherlands post-commitment actions did not alter the terms of treaty commitment for the state, but rather criticized the ways in which other states altered their own commitment. The Netherlands focused lodging objection actions such as the following objection in 1996 to reservations made by Malaysia:

The Government of the Kingdom of the Netherlands considers ... that such reservations, which seeks to limit the responsibilities of the reserving State under the Convention by invoking the general principles of national law and the Constitution, may raise doubts as to the commitment of this State to the object and purpose of the Convention and, moreover contribute to undermining the basis of international treaty law. It is in the common interest of States that treaties to which they have chosen to become parties should be respected, as to object and purpose, by all parties (United Nations Treaty Series 2000, 396).

Despite the need for legislative approval for ratification, the Netherlands did not lump all post-commitment actions at the time of ratification. While commitment altering post-commitment actions were debated within the Parliament and originally proposed for submission at time of ratification, objection actions were treated differently. As objection actions do not alter the stakes of commitment for the Netherlands, its Parliament may not have been as concerned with the timing and frequency of objection actions as with reservation actions. This result points to the potential finding that legislatures consider different treaty actions differently and are less inclined to interfere or draft ones that do not alter state treaty obligations.

Netherlands Conclusion

Despite its global advocacy for human rights and international involvement in drafting human rights treaties, the Netherlands was unable to quickly ratify the CEDAW treaty. In this chapter, I discussed how the requirement of domestic legislative approval for international treaty ratification allowed conservative Christian groups to delay CEDAW ratification. The groups continued to contest parts of the treaty they disagreed with and the Dutch government continued to appease these groups even after ratification, expressing reluctance to force the SGP, for example, to require the allowance of female political leadership within the party.

In the case of the Netherlands and CEDAW, the involvement of the parliament delayed the ratification process and the direct incorporation of international law moved forward improvement in human rights practices. Despite domestic support for women's rights and the CEDAW treaty, the objections of the conservative group SGP created a credible enough threat in the parliament to delay ratification for 11 years. Because of the domestic requirement of legislative approval for international treaty ratification, a domestic group in opposition to the treaty within the parliament was enough to delay ratification. Had the Netherlands not faced the barrier of legislative approval for ratification, it may likely have ratified earlier. Signature of the CEDAW occurred during a period of improvement for women's rights during the 1980s. Women were included in the workforce and teenage births declined. Alternatively, rights did not markedly improve post-ratification of CEDAW in the Netherlands. This case highlights how the domestic legislative barrier allows opposition groups to use institutional means to delay ratification. The CEDAW case also highlights the importance of examining signature timing and rights behavior surrounding signature, not only ratification, in order to capture important trends in rights practices.

CHAPTER 6

Canada

James Madison wrote that the legislature “is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex” (1788). Madison was, of course, referencing the American legislature. However, he spoke from knowledge of other legislatures as well. What happens when the legislature does not extend its control over ratification? Here, the examination of Canada provides insight and illustrates the timing and temperament of treaty ratification in a state where the domestic legislature does not approve treaty ratification. Canada differs from the United States and the Netherlands in one very important dimension – in Canada there is no legislative approval required for treaty ratification. Treaty ratification is instead a responsibility of the executive branch. Similar to the United States, legislative involvement is required at the point of implementation of treaty law into domestic law. Including the study of Canada provides insight into how the ratification process unfolds in a state wherein the burden of legislative approval is not required.

I start the chapter by describing the Canadian domestic policies governing the commitment to and implementation of international human rights law. In this section, I discuss which domestic political actors and branches of government are involved in signing and ratifying treaty law. I also discuss which domestic actors and processes are involved with the incorporation of international law into domestic law and the standing of international law relative to domestic law in Canada. Then, I explore the case of Canada’s commitment, compliance, and post-commitment activities toward the Convention on the Rights of the Child. Through this case, I highlight the ways that that domestic ratification barriers, and in the case of Canada the

lack thereof, matter for ratification timing. I conclude by reviewing the findings from the CRC case.

Case Selection and Overview

Why Canada?

Canada offers an illustrative example differing from the previously examined cases of the United States and the Netherlands. In contrast to these two prior cases, domestic legislative approval is not required for international treaty law ratification. Instead, the executive branch is responsible for formal treaty commitment. In that respect, Canada varies on a key variable of interest in this dissertation- the involvement of the domestic legislature for treaty ratification. While the cases of the United States and the Netherlands illustrate how the involvement of the legislature allows groups opposed to ratifying treaties the political opportunity and capability to delay ratification via institutional means, examining Canada allows me to illustrate how domestic groups can oppose a treaty without necessarily leveraging the political arm of the legislature to delay or altogether oppose treaty ratification. Canada differs from the Netherlands in that it approaches international law in the dualist tradition. In Canada, there is specific legislation required for the incorporation of international law. While the executive branch can ratify international law, it cannot implement it without the approval of Parliament.

The removal of parliament from the treaty ratification process makes group mobilization around treaty ratification a different, and potentially less successful, endeavor. NGOs and rights groups urged Harper to ratify Optional Protocol to the Convention against Torture, to no avail. The groups were unable to leverage the parliament as groups in the United States and the Netherlands did to oppose ratification. This can be seen in examining the Optional Protocol to

the United Nations Convention against Torture. Citizens and 50 human rights groups called on the Harper Administration to ratify the Optional Protocol, to no avail.¹¹⁷ Amnesty International noted the work of human rights activists and “Despite repeated calls, the (Canadian) government did not ratify the Arms Trade Treaty or the Optional Protocol to the UN Convention against Torture.”¹¹⁸

Why CRC?

I begin the chapter by focusing on Canada and the Convention on the Rights of the Child (CRC). Canada signed the CRC in 1990, 1 year after it opened for signature, and ratified it in 1991. The CRC is the most accepted United Nations human rights treaty, with only 3 states failing to ratify.¹¹⁹ Examining the CRC in the Canadian context illustrates how even in supportive conditions, the legislature did not move to implement the treaty quickly.

The CRC offered an example of intersectionality of rights between children’s rights and indigenous rights. Although the Canadian people supported children’s rights, there was less push to implement the treaty, and outright controversy around implementing parts that pertained to indigenous rights. Howe addresses three primary obstacles Canada confronted in implementing the CRC its federal system, its availability of financial resources and “the lack of public pressure for implementation. In Canada, as elsewhere, government action is highly influenced by political pressure. However, in the area of children’s rights, little pressure comes

¹¹⁷ <http://www.canadianprogressiveworld.com/2014/12/10/international-human-rights-day-50-civil-society-groups-urge-harper-to-oppose-torture/>

<http://canadians.org/blog/council-canadians-joins-50-groups-calling-canada-oppose-torture>

¹¹⁸ <https://www.amnesty.org/en/countries/americas/canada/report-canada/>

¹¹⁹ As of May 2016.

from the chief stakeholders- Canada's children. They do not vote, they have little money and resources, and they seldom are involved in organization and lobbying activity" (Howe 2012, 144-5).

Domestic Laws of Ratification and Implementation

Domestic Law on Ratification

Canada offers case of differing domestic requirements for international treaty ratification from those in place in the United States and the Netherlands. In contrast to the two previous cases, the Canadian Parliament does not approve international treaties: "*Contrary to the situation in most western democracies, such as the United States, there is no requirement in Canada for approval, or even involvement, by Parliament or the provincial legislatures, where applicable, in the acceptance of new international legal obligations by Canada through adherence to treaties. This is not to say that the issue of becoming party to the international instrument may not be discussed or even debated on an *ad hoc* basis. There is, however, no requirement for parliamentary approval or study.*"¹²⁰ As treaty ratification does not go through Parliament, Canada is closer in approach to ratification to the United Kingdom and Australia. Within these states, ratification approval is decided by the Cabinet rather than through legislative approval via the Parliament.

Taking the place of the parliament in approving ratification, the executive branch controls the signature and ratification of international treaties. While no provision of the Canadian Constitution explicitly assigns this role to the executive, it is common practice of the executive

¹²⁰ <http://www.parl.gc.ca/Content/SEN/Committee/371/huma/rep/rep02dec01-e.htm#C.%20International%20Human%20Rights%20in%20Canada>

branch to take on the role of ratifying treaties (Barnett and Spano: 2008). The Cabinet, the Department of Foreign Affairs and International Trade (DFAIT), the Minister of Foreign Affairs, and the Prime Minister are the important actors in treaty ratification in Canada.

The Cabinet authorizes the Minister of Foreign Affairs to ratify or accede to international treaty law.¹²¹ However, “even here, a prime minister with a strong parliamentary majority can push through ratification in the Cabinet” (Busby 2010, 132). Once treaty negotiations conclude, the Cabinet must approve of the treaty for signature. After signature, the treaty is tabled in the House of Commons for at least 21 days. Prior to 2008, this was an informal process. With a 2008 law, treaty tabling became a formal process to allow for debate, consideration, and the implementation of required domestic law prior to treaty ratification. The Parliamentary role in treaty signature and ratification takes on a role geared towards assessing required policy changes rather than debating whether or not Canada will ratify the treaty. Even with this expanded role, parliament is not involved in the act of ratification and approval is not required. This time allows for, among other things, for legislative consideration assessing whether the treaty requires additional domestic legislation to implement. Following the tabling process and adoption of any required legislation, the Department of Foreign Affairs and International Trade (DFAIT) and the Treaty Section specifically seek an Order in Council to finalize Canadian ratification.¹²²

Given the limited involvement of Parliament in the ratification approval process, the executive takes on a stronger role in Canada. The Canadian Prime minister has more freedom to act on party and personal beliefs than a head of state in either the United States or the

¹²¹ In more recent years, Canada has generally switched from its practices of accession to that of signature followed by ratification which may be a result of the 2008 Canadian policy that expanded the role of Parliament by stating that all treaties must be tabled in the House of Commons before ratification.

¹²² “Policy on Tabling of Treaties in Parliament” Treaty Law Division of the Canadian Government accessed at <http://www.treaty-accord.gc.ca/procedures.aspx?lang=eng>

Netherlands could. In approaching environmental law, the Canadian Prime minister was able to ensure Kyoto Protocol ratification: “With a disciplined majority in the Canadian House of Commons, Prime Minister Chrétien had the institutional capacity to deliver on his personal commitment to the Kyoto Protocol” (Harrison 2007, 97). The executive power during treaty ratification enabled Chrétien to “push through ratification despite significant opposition” (Busby 2010, 134).

Even with the streamlined ratification process in Canada, ratification is not guaranteed to come without controversy or delay. Trade treaties in particular have been notably controversial in Canada. Although the executive branch can ratify unpopular treaties in Canada, scholars offer some evidence that a political backlash can come against the Prime Minister. Research links the ratification of controversial treaties with lower support for Canadian Prime Ministers during election season (e.g. Lantis 2005, 45) The Foreign Investment Promotion and Protection Agreement (FIPA) with China drew particular criticism. Concerning FIPA, the agreement was notably controversial with the general public, but was still ratified in 2014 with Cabinet approval two years following signature.¹²³ The Hupacasath First Nation on Vancouver Island filed a court action against the FIPA with China, citing that the Canadian government did not consult the group when the FIPA implementation could adversely affect their rights.¹²⁴ Under Section 35 of the Canadian Constitution Act, the federal government is required to protect the rights of aboriginal peoples and their treaty rights (Constitution Act 1982 Section 35 (1)). This objection to the Agreement came at a time of increased federal scrutiny of treatment of First Nations

¹²³ FIPA Agreement with China: What’s really in it for Canada? September 19 2014. Accessed at <http://www.cbc.ca/news/canada/fipa-agreement-with-china-what-s-really-in-it-for-canada-1.2770159>

¹²⁴ Canada-China FIPA Challenge By Hupacasath First Nation Rejected 10 27 2013 Huffington Post Canada accessed at http://www.huffingtonpost.ca/2013/08/27/canada-china-fipa-first-nation_n_3825036.html

people.¹²⁵ Even given this rights climate, a Federal court dismissed the claim. Because of the lack of Parliamentary involvement in the ratification process, the FIPA deal was shrouded in secrecy, with only one hour of public information provided to the parliamentarians.¹²⁶ Even with the controversy surrounding the FIPA with China, the Cabinet ratified the agreement within two years, using its ability to circumvent the parliament and extensive public debates on the treaty.¹²⁷

Canada requires the consultation of the provinces and Aboriginal peoples prior to ratification of treaties that would impact provincial jurisdiction and have the potential to impact Aboriginal or Aboriginal Treaty rights. Trone (2001) goes as far as to write “The most important formal mechanism for federal-provincial consultation in relation to the making and implementation of treaties is that concerning human rights treaties” (41). For human rights treaty ratification, Canada seeks the support of all provinces: “Provincial and territorial support is sought to ensure effective domestic implementation of Canada’s international obligations” (Canadian Department of Justice 2015). According to the Senior Counsel of the Human Rights Law Section in the Department of Justice Canada, provincial consultation and support is viewed by the Canadian government as a “general practice” rather than a legal obligation (Eid 2001, 2).

Consultation of Aboriginal groups is generally sought “especially if the treaty being considered involves Aboriginal areas of jurisdiction or authority” (Canadian Department of Justice 2015). The Supreme Court of Canada cemented this requirement in the 2004 rulings of *Haida Nation v. British Columbia (Minister of Forests)* and *Taku River Tlingit First Nation v.*

¹²⁵ In 2007, the First Nations Child and Family Caring Society and the Assembly of First Nations filed a complaint alleging that there was wide-spread discrimination in the child welfare services the Canadian federal government provided to First Nations children. This case gained widespread attention and in January 2016, the Canadian Human Rights Tribunal ruled that the federal government was guilty of discriminatory practices against the First Nations children.

¹²⁶ FIA Agreement – CBC article from footnote 41.

¹²⁷ Global Affairs Canada. 2014. Canada-China Foreign Investment Promotion and Protection Agreement (FIPA) accessed at <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/china-chine.aspx?lang=eng>

British Columbia (Project Assessment Director) and the 2005 ruling of *Mikisew Cree First Nation v. Canada* (Minister of Canadian Heritage).¹²⁸ Consult of Aboriginal groups is of particular importance in the area of human rights, as human rights violations influence the Aboriginal groups disproportionately in Canada.¹²⁹

Given the executive power to ratify, ratification is less likely to be inhibited by institutional delay from the parliament. Even when the treaty is controversial and if the Prime Minister faces long term political consequences of pushing an unpopular treaty, the executive branch can pursue ratification.

Canada's treaty ratification process has the capability to be a relatively quick process. In discussing time delays incurred during treaty ratification, the OECD described the Canadian ratification process of Double Tax Conventions (DTCs) key delays as 1) the requirement to translate the treaty text into French when negotiated in English (and vice versa) 2) the 21-day tabling period in Parliament and 3) the requirement of Cabinet approval, which can take two to four months (OECD 2011, 58). These steps do not constitute extensive institutionalized delays in and of themselves.

Canada altered its commitment practices between accession and signature and ratification. With the two treaties Canada committed to through accession, it did so 10 years after the treaty opened for signature. When Canada pursued ratification, it signed the treaties on average, less than a year and ratified, on average, 2.6 years after the treaty opened for signature. The gap between signature and ratification was, on average, 2.2 years. Although Canada

¹²⁸ *Haida Nation v. British Columbia*, 2004 SCC73; *Taku River Tlingit First Nation v. British Columbia*, 2004 SCC74; *Mikisew Cree First Nation v. Canada*, 2005 SCC 69.

¹²⁹ See for example the campaigns for Indigenous Peoples rights in Canada by Amnesty International, Human Rights Watch, and numerous United Nations reports citing Canada's poor human rights record pertaining to aboriginal peoples.

acceded later than it ratified treaties, it committed through accession the same year that the ICCPR and ICECR went into effect, the earliest most treaties allow for accession.

Even though prior to 2008, the Canadian commitment process was controlled by the executive, Canada opted to employ both accession and ratification as means of legally binding commitment. With either commitment route, Canada acted quickly within the confines of UN action limitations. Given the swift actions and divide between accession and ratification routes, it becomes important to examine when, in some cases. Canada acceded to the ICCPR and ICESCR, two treaties that resulted in larger gaps between opening and ratification for the United States and the Netherlands.

Domestic Law on Implementation

Canada is a dualist state in its approach to international law. International law does not immediately take effect in Canada, so the Canadian Parliament must incorporate international treaty law through domestic legislation for it to take effect. Without Parliamentary incorporation of international treaty commitments individuals and courts cannot cite or legally draw from the international human rights law even if Canada ratified. Parliamentary incorporation can come in the form a new statute, the expansion of standing laws, or a legislative note of support. The check on international law comes at the implementation stage rather than the ratification stage in international legal adherence: “Its (the dualist approach) intent is to safeguard the democratic legislative process by ensuring that the laws and rights of the people are not altered without the consent of their elected and appointed representatives.”¹³⁰

¹³⁰ Ibid b) Canada’s Domestic Implementation of Its International Human Rights Obligations i) The Effect of International Human Rights Law on Canadian Law

While involving Parliament at the implementation stage provides a democratic check on the executive branch, requiring implementation via statute greatly affects how international law is used and treated in Canada. Manirotabona and Crépeau (2012) write that although Canada ratified six core human rights treaties, “None of them have been specifically incorporated into Canadian law” (31). The implication of this is striking. Despite the appearance and reputation as a relatively quick ratifier and supporter of international human rights at the international level, the domestic requirement of parliamentary implementation makes it difficult for Canada and Canadians to benefit from rights coverage from international human rights treaties.

The issue of implementation is problematic in Canadian courts. Because international law is not directly applied to Canadian domestic law, Canadian courts cannot directly incorporate international human rights law into case rulings when the Parliament has not implemented accompanying legislation via statutes. As a result of the distinction between international law and domestic law, “Canadians, including lawyers and judges, know little about international human rights law, although this is slowly changing.”¹³¹ There are two differing approaches to the extent to which a court could interpret international treaty law as domestically binding without the accompanying relevant statutes. Although many human rights treaties have not been incorporated legislatively in Canada, the Canadian Standing Senate Committee on Human Rights contends that “A common law doctrine holds that courts should presume that Parliament intended to legislate in a manner consistent with its international treaty obligations”¹³² Toope (2001) questioned whether and how this presumed interpretation affected courts implementing

¹³¹ Implementing Canada’s Human Rights Obligations. 2001. Report of the Standing Committee on Human Rights I.C.2. Implementation of International Human Rights Obligations by Canada. Accessed at <http://www.parl.gc.ca/Content/SEN/Committee/371/huma/rep/rep02dec01-e.htm#2>. Implementation of International Human Rights Obligations by Canada

¹³² Ibid. ii) Canada’s Approach to Legislative Implementation c

ratified, yet unimplemented treaties. “Whether that kind of inferred transformation is real transformation is a difficult question, and one that is giving rise to interpretative problems in our courts” (15). While some legal scholars posit that this presumed interpretation can enable Canadian courts to reference and draw from international agreements without domestic statutes, the Supreme Court of Canada ruled in *Baker v. Canada* (1999) that international agreements cannot be interpreted as domestic law without the relevant statutes.¹³³ However, the Supreme Court of Canada also wrote that international human rights law is “a critical influence on the interpretation of the scope of the rights included in the Charter” and inform the “contextual approach” (Bayefsky 1997, 295).

The international community and international law, more broadly, do not understand dualism or a particular domestic structure of law as reason to avoid or delay international treaty obligations. The Vienna Convention on the Law of Treaties of 1969 states in Article 27 that “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” Rights groups and the United Nations notably criticize Canada when its implementation of human rights law falls short. The Canadian government often interprets existing domestic law as fulfilling the obligations of implementing international human rights law. This is problematic at times when the standing domestic law and new international law do not align on rights coverage. For example, Canada has drawn criticism from the United Nations for failing to fully implement the ICCPR. The Canadian government points to the Canadian Charter of Rights as the implementing legislation of the ICCPR; however, the Charter does not fully cover the rights encompassed in ICCPR. The United Nations Human Rights Committee cited this problem in a 1999 review:

¹³³ *Baker v Canada*, [1999] 2 SCR 817, online: SCC <http://scc.lexum.org/en/1999/1999scr2-817/1999scr2-817.html> [Baker].

The Committee is concerned that gaps remain between the protection of rights under the Canadian Charter and other federal and provincial laws and the protection required under the Covenant, and recommends measures to ensure full implementation of Covenant rights. In this regard the Committee recommends that consideration be given to the establishment of a public body responsible for overseeing implementation of the Covenant and for reporting on any deficiencies. (Human Rights Committee 1999)

Treaty Case: The Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child (CRC) is one of the most globally supported United Nations human rights treaties. Once allowed to legally commit to the treaty, the State of Palestine and South Sudan acceded to the treaty in 2014 and 2015 respectively, drawing the number of state parties to the convention to 196. Child rights have long been a focus of the United Nations, with the General Assembly adopting the Declaration of the Rights of the Child in 1959 (UN GA Res 1386 (XIV)) and declaring 1979 as the International Year of the Child. Increased meetings, working groups, and draft conventions during the 1970s and 1980s led to the creation of the CRC in 1989.¹³⁴

In Canada, the CRC was extremely popular as is the issue of children's human rights, more broadly. In the case of Canada and the CRC, ratification occurred very quickly, but Parliament held up the treaty in a "traffic jam" during the implementation stage. As a result, the United Nations and International NGOS along with Canadian human rights organizations highly

¹³⁴ See for example, the General Assembly resolutions 36/27 of 1981, Economic and Social Council resolution 1982/37, and General Assembly resolution 37/190 of 1982.

criticize Canada for its violations of the terms of the CRC treaty and its unwillingness to implement it.

Canada was heavily involved in the drafting and negotiating of the CRC at the United Nations from 1979 until its formal creation in 1989. The United Nations recognized the role of Canadian delegates as being particularly helpful in preparing the draft convention of the rights of the child, along with delegates from the United Kingdom, and the United States (United Nations 2007, xl). Canada was one of eight states that presented the draft convention on the rights of the child along with France, Federal Republic of Germany, Norway, Poland, Sweden, the United Kingdom, and the United States in 1979. Canada continued working group participation in 1981, 1982, 1983, 1984, and as an observer in 1985, 1986, 1987, 1988, and 1989. A French representative cited delegates from Canada and Poland as playing “particularly constructive roles” (United Nations 2007, 131). The delegate mentioned children involving themselves with the convention citing that “On a few occasions, schoolchildren from Canada came to listen to the debates in the Working Group.” (United Nations 2007, xl). A Canadian Expert, Dr. Olive Stone, prepared one of the three working papers for the European Conference on the Rights of the Child in Warsaw, entitled “The Responsibility of the Family and of Society towards the Child” in 1979 (United Nations 2007, 50).

Ratification of the CRC

Leading up to treaty ratification, there was no extensive debate held in the Canadian Parliament. In fact, the only mention of the Convention on the Rights of the Child in the parliamentary sessions prior to ratification was the urging from Senator Noel Kinsella for Parliamentary support for the treaty as provincial leaders were being consulted, “Given the

longstanding interest of this chamber in the Rights of the Child...it would be helpful for the ratification process if honourable senators would support this process in the various parts of Canada” (June 19, 1991 Senate Debates).¹³⁵ There was consultation with provincial and territorial leaders about the treaty. Consultation was required in the issue of children’s rights as the issue area cut across jurisdiction levels.

Following the negotiation of the draft Convention on the Rights of the Child, Canadian diplomat Mr. Frontier applauded the draft convention and was “optimistic that (Canadian) ratification would be prompt” (United Nations 2007, 251). Mr. Frontier was correct. Canada signed the Convention on the Rights of the Child on May 28, 1990 and ratified it on December 13, 1991, less than two years after the treaty formally opened for signature. Without the need for parliamentary approval, Canada was able to quickly ratify the treaty.

Implementation into Canadian Law

Domestic and international actors criticize Canada for failing to fully implement the CRC into domestic law. In speaking about implementing the Convention, “The Prime Minister ratified the convention with great pride because it was an illustration of Canada’s belief that children, indeed the world’s children, matter. Now we have before us in this budget the outline of the proposed new child benefit program....We have had a bit of a patchwork over the years. There have been perhaps 20 separate occasions when these programs have been added to and adjusted

¹³⁵ Author search conducted using the terms “Convention on the Rights of the Child” “Child Rights Convention” and “United Nations Convention on the Rights of the Child” found no other references to the treaty in the 5 years leading up to ratification.

by legislation or by a motion....Perhaps we are now going to get something that is a little more organized” (Canadian Senate Debates March 17, 1992).

The incongruity between Canadian interpretation and international expectations stems from the Canadian government’s view that existing domestic law already met the rights included in the CRC. Based on an evaluation prior to ratification, the Canadian federal government concluded that “Canadian laws already were in conformity with the convention . . . there was no need for the incorporation of the convention after 1991” (Howe 2012, 146). Specifically, the Canadian government was satisfied that the Canadian Charter of Rights and Freedoms, along with provincial level human rights policies already implemented the terms of the Convention. Minister Ken Dryden commented on a reason not to centralize implementation of the treaty, “putting the Convention into action is not the work of any one department or agency... it cuts across all Government of Canada departments...at every level and across society” (2001).

Applying the terms and provisions of the Convention on the Rights of the Child proved difficult even given the existing rights framework in Canada. Senator Mira Spivak spoke of implementation problems around childhood tax benefit and called for “changes to the child benefits package so the rhetoric surrounding the signing of the Convention on Children’s Rights and the declarations of those in the political process are implemented into legislation” (Canadian Senate Debates September 22, 1992).

Given Canada’s dualist approach to international law, the CRC treaty confronted opposition when cited in Canadian courts. Those arguing that Canada already implemented the CRC argue that courts can use the treaty to interpret children’s rights legislation. Honourable Irwin Cotler of the International Institute for Child Rights and Development argued that the CRC should be used as a guide to help interpret Canadian law (Toohey 2001, 20). In the influential

Supreme Court of Canada ruling in *Baker v. Canada* 1999, the Supreme Court of Canada cited the Convention on the Rights of the Child specifically and ruled that although Canada had not implemented the treaty, the treaty could be used as a guiding principle in decision-making.¹³⁶ Despite the possibility that Canadian courts implement and interpret the Convention when the parliament had not, prevailing domestic practices point to a more limited capability of the courts to draw from the Convention on the Rights of the Child.

The Canadian government, however, admitted that this interpretive presumption perspective “is only occasionally argued or used in the courts.” Irit Wesier, the Senior General Counsel and Head of Legal Services at Health Canada, clarified through testimony the ability of Canadians to cite the Convention: “If someone felt that Canada was violating a particular article of that Convention, they could not start an action in Canadian courts based on that particular article of the Convention. They could try to find something in our Charter or some other piece of legislation and argue that the convention affects the interpretation of the domestic law or of our Charter and amounts to a violation, but they cannot start their court action based on the treaty alone” (2001).

Canadian Compliance with CRC

The United Nations recognized several positive moves on the part of Canada in compliance with the Convention. Specifically, the creation of the Children’s Bureau and the National Council for Crime Prevention targeted the expansion of children’s human rights. The Committee on the Rights of the Child also applauded Canada for participating with UNICEF and

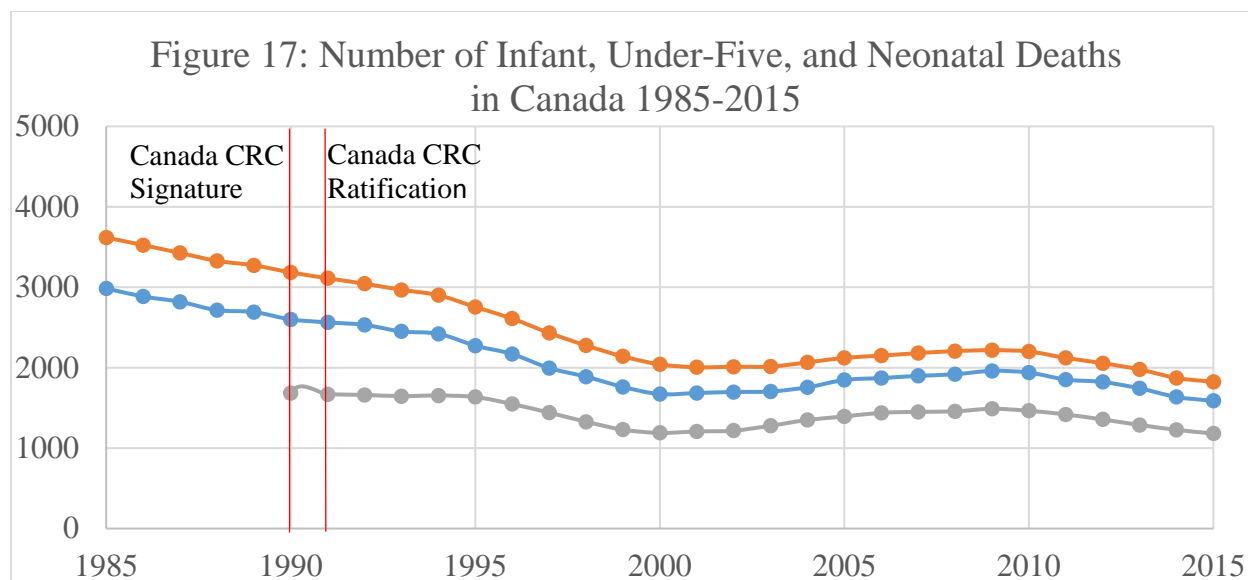
¹³⁶ *Baker v. Canada* (Minister of Citizenship and Immigration) Supreme Court of Canada 1999, 2 SCR 817.

children's rights INGOs in the issue of children's rights (United Nations 1995, 1-2). Despite these positive aspects of Canadian compliance with the Convention, overall, the United Nations and other actors viewed its compliance as severely lacking.

What we see in Canada is an attempt by the government to meet compliance (and implementation) standards directly tied to the ratification decision. Working groups consulted domestic laws to assess compliance prior to ratification. Even in this case where the government was not working around a legislature for the ratification approval, we see that ratification becomes a problematic marking point for changes in behavior as it relates to international treaty compliance. Given the dualist approach to international law, Canada was primarily concerned with the question of incorporation and it actively sought to rectify any discords between the Convention on the Rights of the Child and domestic laws covering child rights, although unsuccessfully, prior to ratification. This contradicts expectations of scholars and practitioners that ratification is the key point of measurement.

As a result of the lack of full implementation of the Convention of the Rights of the Child, international and domestic groups call out Canada for not being in full compliance with the treaty. In fact, the number one recommendation from UNICEF to Canada pertaining to the Convention on the Rights of the Child was to pass enabling legislation and "ensure that all legislation in Canada complies with the Convention" (United Nations: 2009, xi).

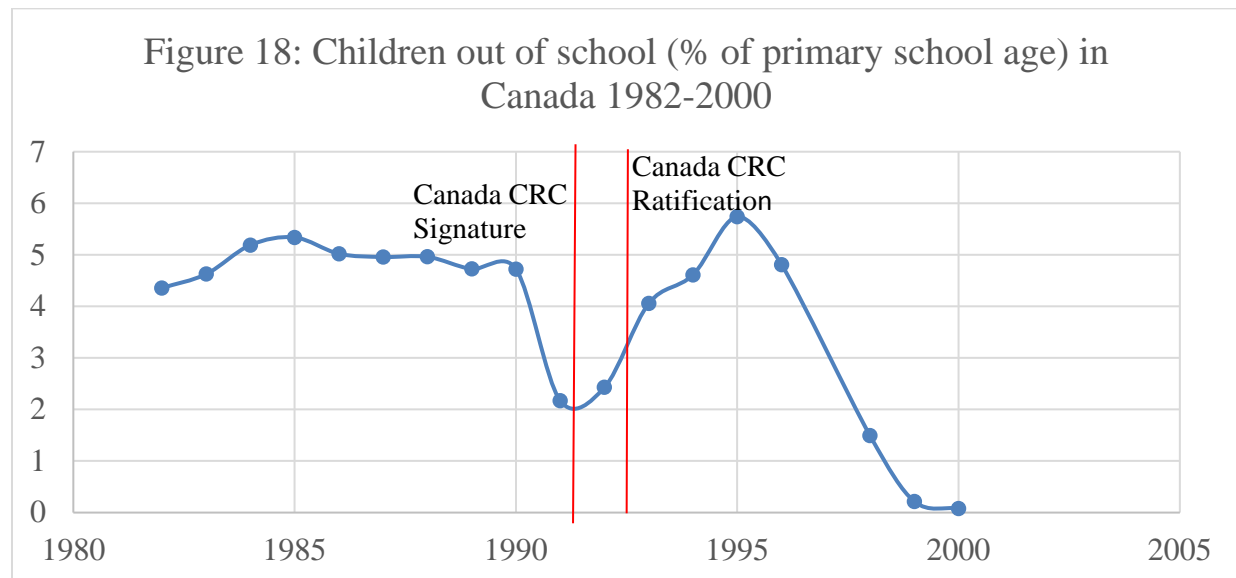
The CRC calls for ending discrimination against children and states the responsibility of state parties for ensuring the best interests of the child. The CRC specifically recognizes the role of indigenous cultures, practices, and histories in the rights of the child (e.g. Article 30).



An important theme throughout the CRC is state responsibility for the health of children, from pre-natal throughout adolescence. Article 24.1 calls for diminishing of infant and child mortality and Article 24.d. calls for the provision of pre-natal and post-natal care. The above Figure 17 plots the number of neonatal, infant, and under-five year old deaths in Canada from 1985-2015. The data come from the World Bank World Development Indicators and are the number of infants dying before reaching one year of age, children dying before reaching age five and neonates dying before reaching 28 days of age. The World Bank gathered these estimates for these measures from the UN Inter-agency Group for Child Mortality Estimation.

In examining death estimates at the time of signature (1990) and ratification (1991) of the CRC, the Figure 17 shows the overall downward trend in infant, under-five, and neonatal deaths overtime in Canada. The executive branch in Canada committed to the CRC during a time of support for programs favorable to childhood health such as Canada's participation in the World Summit for the Children in 1989 and Canada's Action Plan for Children in 1992. Because the executive branch was able to commit via both signature and ratification when it wanted to, uninhibited by domestic legislative delays, signature and ratification are only one year apart. In

examining trends in childhood deaths during points of signature and ratification, we see that both forms of commitment occurred during a declining trend in childhood deaths. In this cases, analyzing ratification, may prove to capture a significant change in deaths due to the sharp declining trend. This is also true for signature.



Article 28 of CRC calls for a right to education for children. Figure 30 charts the children out of school, as a percentage of all primary school age children, in Canada from 1982-2000. This data comes from the World Bank Development Indicators, which gathered original data from the United Nations Educational, Scientific, and Cultural Organization (UNESCO) Institute for Statistics.¹³⁷ The data reveal a steep drop in children out of school in 1990, the point of signature, which then leads to a steep rise in the percentage of children out of school.

¹³⁷ “Children out of school are the percentage of primary-school-age children who are not enrolled in primary or secondary school. Children in the official primary age group that are in preprimary education should be considered out of school.” From the World Bank Development Indicators.

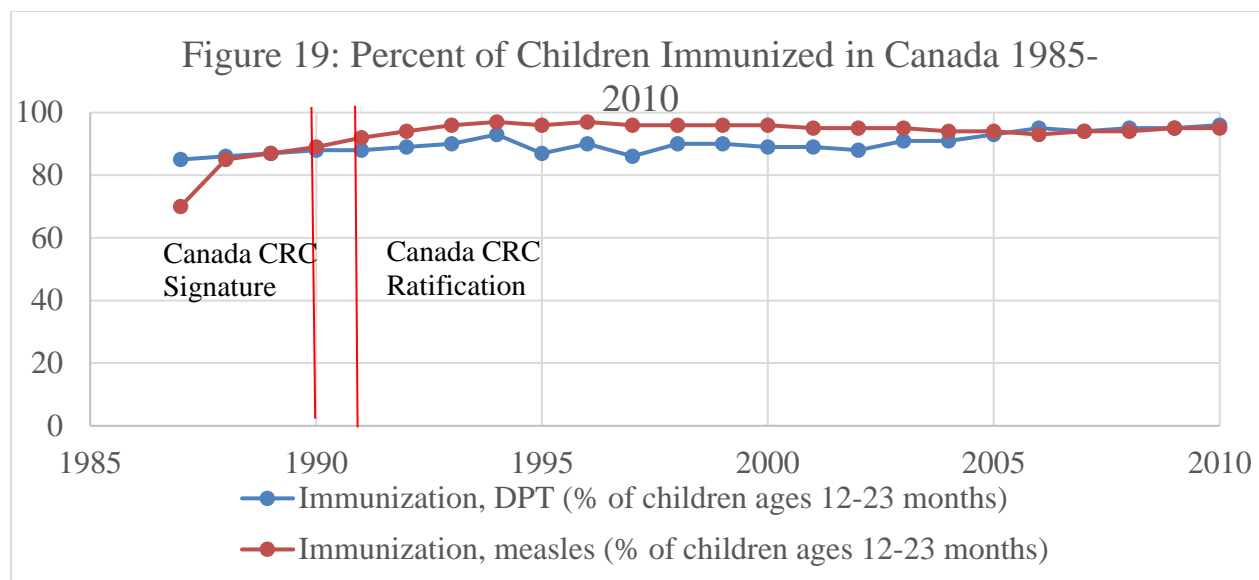


Figure 19 plots the percentage of children, ages 12-23 months, immunized against measles and DPT (Diphtheria, Pertussis, and Tetanus) 1985-2010. These data come from the World Bank Development Indicators. Original data was collected via a World Health Organization Survey. To be coded as immunized, a child must have received 1 dose of the measles vaccine and 3 doses of the DPT vaccine. Immunization rates have increased across both categories between 1985 and 2010. DPT immunization began at 70% of children ages 12-23 months receiving measles vaccines in 1987 and reached 95% in 2009. Similar, the DPT immunization rates have increased overtime, although not as steadily. DPT immunization rates were at 85% in 1987, hovered between the high 80s and low 90s throughout the 1990s, and then reached 95% after 2006. Both vaccination rates increased post signature and ratification of the CRC.

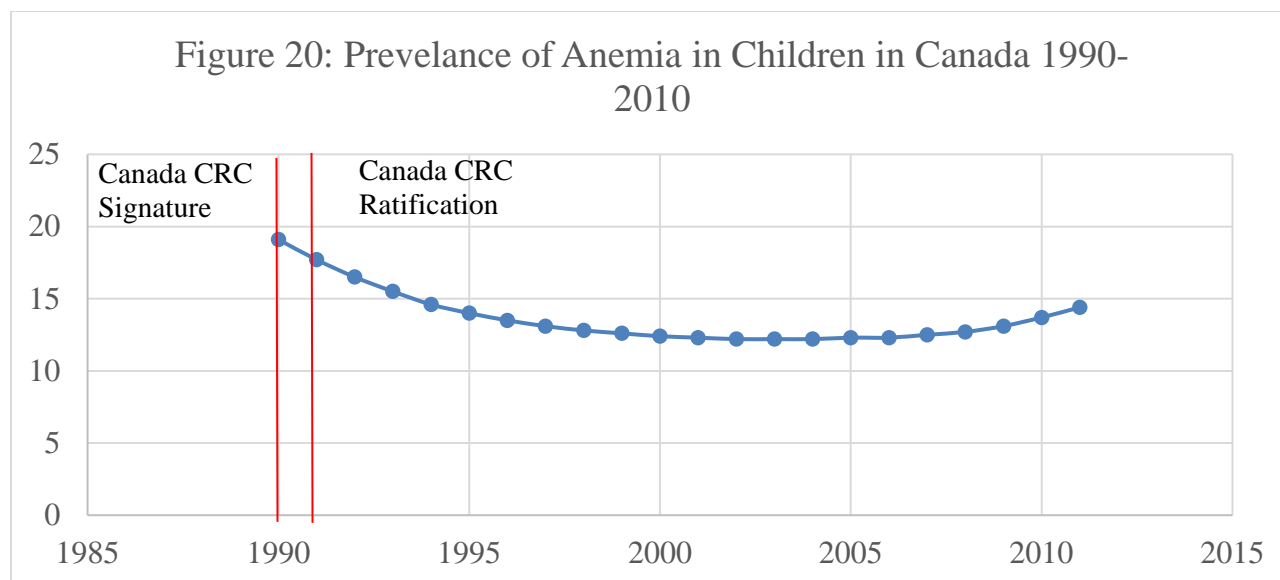


Figure 20 shows the prevalence of anemia in children in Canada from 1990-2010, as a percentage of children under 5. This data comes from the World Bank World Development Indicators with original data compiled by the World Health Organization.¹³⁸ Data was available 1990 and after, capturing the time after Canada signed and ratified the CRC. Following commitment to the CRC, the trends in anemic children declined from about 19% in 1990 to about 12% in 2003.

In examining health measures of infant and childhood deaths, immunization rates, and prevalence of anemia, data trends indicated an improvement of health indicators following CRC commitment. The education measure of percentage of school age children out of school declined overall, but spiked in the mid-1990s.

Harder to quantify, but of increasing importance in Canada, is the coverage of indigenous children's rights through the CRC. In 2009, UNICEF Canada released a report on Aboriginal children's health, "Aboriginal Children's Health: Leaving No Child Behind" to mark the 20th

¹³⁸ Prevalence of anemia, children under age 5, is the percentage of children under age 5 whose hemoglobin level is less than 110 grams per liter at sea level.

anniversary of the Convention on the Rights of the Child. Despite almost twenty years passing since Canadian ratification of the treaty and some improvements over time, UNICEF found extensive disparities between indigenous groups' children's health and the national averages. UNICEF Canada remarked that the health disparities was "one of the most significant children's rights challenges facing our nation" (UNICEF Canada 2009). The report found, for example, that the national average infant mortality rate lowered to five per live 1,000 births. Infant mortality rates among First Nations peoples is eight deaths per 1,000 live births. In some areas, with higher aboriginal Canadian populations, the infant mortality rate is as high as 16 deaths per 1,000 live births, "more than three times the national rate and almost equal to that in Sri Lanka" (UNICEF Canada 2009, iii).

As recent as in a 2015 assessment of Canadian compliance with the Convention on the Rights of the Child produced a critical picture of Canadian compliance overall. The Hon. Jim Munson addressed the report in Parliament:

"In the words of one spokesperson for the report '...government buck-passing continues and so does the suffering' Lack of federal leadership, ongoing jurisdictional banter, budget cuts and funding shortages for organizations devoted to children's rights, Canada's failure to implement — not just ratify, not just sign — the UN convention within domestic law, and low public awareness and understanding of children's rights" (Canadian Library of the Parliament 2015).

Canada has come under scrutiny for its treatment of foreign children seeking refugee status. Although supportive of children's rights and the CRC in its broad sense, the Canadian approach to refugee, deportation issues, and related immigration issues highlights the disconnect between the law of the treaty and the law that the Canadian parliament implemented. The most

recent version of the Immigration and Refugee Protection Act came through amendments in 2012 known as BC-31 or the Protecting Canada's Immigration System Act. This and earlier versions of the Immigration and Refugee Protection Act contrast in coverage of children's rights, leaving rights open to violation in at least two important areas: the separation of families/deportation of children and the detention of minors related to immigration issues.

While Article 3(1) of the CRC calls for "the best interests of the child" as "Primary consideration...in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies," Canadian law instead only requires that the best interests of the child be "taken into account" (Canada's Immigration and Refugee Protection Act). The Canadian Council for Refugees argues that this domestic legal distinction results in the separation of families, deportation of children, and denial of refugee status because the home country conditions are bad but not "bad enough" to justify the child to remain in Canada.

Article 37(d) of the CRC states:

Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

B C-31 in some cases, calls for detention for up to one year for first time immigration regulation violation. This detention applies to individuals 16 and older, ages considered juveniles under international law. B C-31 Section 23.1(a) writes of the mandatory arrest and detention of a "designated foreign national who is 16 years of age or older on the day of the arrival that is

subject to the designation.”. Arrests of such individuals can occur without a warrant (Section 21.1(b)).

In Canada, implementing terms of treaty law can be difficult due to the involvement of parliament. This is particularly applicable to indigenous rights in Canada. The indigenous rights campaign Idle No More originated in response to the 2012 Harper government Bill-C45, widely viewed as hostile to indigenous rights. Despite mobilization against this bill, it passed in parliament without issue and without any amendment.¹³⁹

Canada was also criticized over its Youth Criminal Justice Act. Senator Earl A Hastings speaking of Canada’s need to amend the Young Offenders Act to comply with the Convention on the Rights of the Child said “I remind you honourable senators, we were a signatory to that convention (The Convention on the Rights of the Child). Of course, when the Prime Minister got home, after being front and center, we had to withdraw. It is a sad day for every Canadian to know that we cannot be part of that convention because of our policies. We cannot live up to that convention, as reflected in this bill” (Canadian Senate Debates April 9, 1992). Changes made to the Young Offenders Act in 2012, prompted further criticism. The United Nations Committee on the Rights of the Child wrote that the Act is “excessively punitive for children and not sufficiently restorative in nature...the committee also regrets that there was no child rights assessment or mechanism to ensure that Bill C-10 (the changes to the act) complied with the provisions of the convention” (United Nations 2012).

Instead of responding with appreciation for the authority of the United Nations committee, parliamentary representatives criticized the committee. Conservative parliamentary secretary Bob Deschert questioned the committee ruling as one of its members was from Syria:

¹³⁹ <https://www.opencanada.org/features/six-social-movements-the-world-can-learn-from/>

“Syria, a country whose rulers are stealing the innocence of an entire generation of its children, is criticizing Canada. Imagine that. This is no doubt to distract from the atrocities that Syrian children are currently facing every day.”¹⁴⁰

In examining Canada’s compliance with the CRC, clear strides in health and education areas occurred around the time of commitment to the CRC. Other important areas covered by the CRC including indigenous rights and children in the court system were not adequately implemented by parliament. These trends highlight the importance of parliament in fully implementing a treaty into domestic law.

Post-Commitment Actions

Canada made a total of three post-commitment actions to the Convention on the Rights of the Child. All three were made upon ratification of the treaty in 1991. Canada submitted two reservations to the treaty and one understanding. Two of the post-commitment actions pertained to the Aboriginal peoples in Canada. A reservation to Article 21 “reserves the right not to apply the provisions of Article 21 to the extent that they may be inconsistent with customary forms of care among aboriginal peoples in Canada.” Similarly, the post-commitment treaty action of understanding dealt with the application of the treaty to aboriginal children. Canada wrote that in implementing the treaty, “due regard must be paid to not denying their right...to enjoy their own culture, to profess and practice their own religion and to use their own language” (United Nations Treaty Series 1999, 680).

¹⁴⁰ As quoted in <http://news.nationalpost.com/news/canada/un-slams-canadas-excessively-punitive-justice-plan-accuses-authorities-widespread-discrimination>

CRC Conclusion

The case of Canada and the United Nations Convention on the Rights of the Child revealed several important findings. The case supported hypotheses from this project anticipating faster ratification when the legislature was not involved in ratification approval. This case also revealed how involved the legislature is during the implementation stage for dualist states. The failure to follow through with implementation of the Convention on the Rights of the Child damaged Canada's rights reputation internationally and domestically and negatively impacted compliance and others' views of Canada's compliance behavior.

Canada Conclusion

Canada offers a case of a state that does not confront domestic legislative barriers to ratification of international treaty law. In this chapter, I highlighted the domestic treaty practices and laws in Canada and the emphasis of the implementation stage rather than ratification stage as an opportunity for the parliament to delay and contest aspects of international treaty law. This was the case in examining the CRC. The treaty was supported inside and outside of Canada. The executive branch was able to sign and ratify the treaty extremely quickly, ratifying it one year after opening for signature.

In the case of the CRC and Canada, parliament did not delay the ratification process. However, parliament did debate and delay implementation of aspects of the treaty. In examining other topics covered by the treaty such as health and education, Canada committed to the CRC, generally, at times of increased recognition of children's rights and health coverage. While the overall topic of children's rights was supported by Canadians, controversy arose when children's

rights were applied to indigenous groups. This is the area where rights violations were documented, in the treatment, immigration, schooling, etc. of indigenous children. Examining Canada highlighted the different commitment and compliance patterns in a state without domestic legislative barriers to ratification. The patterns compared with the United States and the Netherlands, wherein the domestic legislatures must approve treaty ratification.

CHAPTER 7

Dictatorships, Legislatures, and International Law

David Hume wrote in 1742 “All absolute governments must very much depend on the administration, and this is one of the great inconveniences attending that form of government.” Thus far the case analysis has examined the connection between legislative involvement, treaty ratification, and compliance with international human rights law in democracies. The focus on democratic states allowed an assumption that there was a credibly strong rule of law, an independent legislature and judiciary, and an overall capability to check the will of the executive in treaty ratification. The United States president or Dutch prime minister could not simply ignore the legislatures’ opposition to human rights treaties and proceed with ratification if they wanted to. The Canadian prime minister could not block domestic courts from citing international human rights standards if it was inconvenient. A certain set of institutional and legal assumptions comes with the democratic states handling of law, international law, and human rights issues. And also an assumption that state leaders and institutions generally supported human rights.

These assumptions do not necessarily hold in non-democratic states. Although, as Hume pointed out in 1742, even authoritarian states have institutions. While not all authoritarian states are equal in terms of political dynamics, institutional presence and strength, and cultural context, there is one commonality – heads of state exercise more power and authority within a system with lower levels of checks than in democracies. Because of this, some scholars caution against attributing causality to domestic institutions such as the legislature in non-democracies.

Pepinsky (2014) warns that “authoritarian institutions will tell us little about these outcomes (such as decisions to murder subjects, favor certain ethnic groups or not, treatment of citizens

etc.), and if we are to explain variation in these factors across regimes and across time, close attention to other variables will be necessary” (37).

Despite this caution, research finds linkages between domestic institutions in authoritarian regimes and outcomes. This connection has been notably supported in the area of economic growth. Gandhi (2010) offers evidence connecting legislatures in authoritarian regimes to economic growth. Guriev et al. (2009) finds support for the relation between low quality institutions and the nationalization of the oil sector and Boix (2003) argues that the number of parties in authoritarian legislatures provides an opportunity for opposition parties to voice their views, leading to the support and implementation of policies producing economic growth. Gandhi and Lust-Okar (2009) posit that legislatures are established to divide the opposition. While Jensen, Malesky, and Weymouth (2014) question the direct role of the legislature in determining economic outcomes in authoritarian states, they argue “the correlation between authoritarian legislatures and investment is not driven by protection of investors from the state; rather, it operates through a formal forum that allows private actors to police themselves” (1).

Applied to the area of international human rights law, scholars draw connections between domestic institutions in authoritarian regimes and ratification and compliance outcomes. In general scholars consider non-democracies less likely to sign human rights treaties in the first place due to ex post costs (von Stein 2005, Hathaway 2007, Powell and Staton 2009). Stronger domestic institutions, such as judiciaries, still can have a constraining effect on a dictator’s ability to violate human rights, “in countries with effective domestic judiciaries, for example, executives must anticipate costs that can arise when international human rights treaties are likely to be enforced domestically” (Conrad 2012, 2). There are incentives for dictators to commit to

international human rights treaties. Domestic opposition groups that pressure leaders for improved human rights may be temporarily appeased when the leaders sign international human rights law (Moustafa 2003; Vreeland 2008). Simmons (2009) considers these states to fall into the category of strategic ratifiers, doing so for “relatively immediate diplomatic rewards, to avoid criticism, or to ingratiate themselves with domestic groups or international audiences” (58). There is a nuanced relationship between strong institutions in dictatorships and human rights commitment and practices, however. Powell and Staton (2009) find that states with effective domestic judiciaries are less likely to commit to the CAT, but more likely to refrain from torture than states without domestic judiciaries. Vreeland (2008) finds that dictators facing strong political opposition in the form of party opposition are more likely than one-party dictatorships to commit to the CAT.

In this chapter, I consider the relationship between legislative involvement in treaty ratification and implementation, compliance, and regime type through the exploration of non-democratic engagement with United Nations human rights treaties. Most of these works consider the dictatorships’ relationship with the CAT. This, in part, is due to the primary coverage of the topic of torture, a tactic employed by many non-democracies to maintain power. Of course non-democracies commit to other human rights treaties and those human rights areas are of interest.

It is less clear, from the existing scholarship analyzing dictatorships and international human rights law what the relationships are between these states and other human rights treaties that cover broader or different human rights. Zartner (2014) argues that regime type is not what matters in state consideration of human rights law, but rather a state’s legal tradition: “It is not just about the relationship between democracy and compliance, or values and compliance”

highlighting how there are non-democracies with minimal human rights provisions such as Kenya while other non-democracies do not make the effort, such as Saudi Arabia (23). These works also primarily consider the judiciary or opposition parties as primary means to check the executive's authority when it comes to human rights issues.

In this chapter, I advance the study of state engagement with international human rights law and specifically the study of non-democratic state engagement with it by expanding on existing literature to 1) look at the role of the legislature as a domestic institution with the potential to influence executive choices as they relate to international human rights law and 2) look at non-democratic engagement and compliance with other core human rights treaties in addition to the CAT.

I investigate the relationship between legislative involvement in non-democratic states and compliance in two ways. First, I conduct statistical analyses complementary to those run in Chapter 3. In this chapter, I specifically focus on analyzing democratic and non-democratic states as groups within analysis to consider how non-democratic states, specifically, approach international treaty law. I ask whether domestic legislative barriers to ratification also effect compliance in non-democratic states as well as democratic states. Second, I trace how the legislature can play important roles in treaty ratification even in non-democratic states. I examine the case of the Convention on the Rights of Persons with Disabilities in Nigeria and in doing so highlight how legislative support and signature can trigger improvements in human rights practices even when the strong-armed executive does not support treaty ratification.

Statistical Analysis

To test whether the relationship between legislative involvement and treaty ratification and compliance holds across regime type, I statistically analyze democracies separately from non-democracies. Doing so allows me to examine whether variables such as signature are significant across regime types and whether having a domestic legislative barrier to ratification affects how states engage with international human rights law. The following three tables include identical variables as included in statistical analyses in Chapter 3. Discussion of variable sources can be found in Chapter 3. Similar to earlier analysis, I employ ordered logit regression analysis to model the categorical dependent variables.

Here I briefly describe the nature of the dependent variable and independent variables of interest.

To measure compliance with the ICCPR, I include the Political Rights measure from Freedom House. Political Rights is a scale of 1, with the least number of violations to 7, with the highest number of violations. To show an improvement in rights practices, variables will have a negative directionality, showing a reduction in violations over time. The Political Rights measure captures key provisions of the ICCPR. The findings presented also hold for the Civil Liberties measure examined in relation to ICCPR in Chapter 3. Commitment actions to ICCPR are: Ratification, Signature, Access, and Succession. All data on state commitment comes from the United Nations Treaty Collection. The variables are coded dichotomously. When a state has not committed via that action, the country-year observation is coded as 0. The year it does commit via that action, and all subsequent years, that measure is coded as 1.

Table 12: ICCPR and Determinants of Political Rights 1977-2006, by Level of Democracy

	Model 1	Model 2	Model 3
Explanatory Variable	All Countries	Democracies	Non-Democracies
Ratification	.2539(.2794)	.2848(.3576)	.3002(.3237)
Signature	-.7626(.3022)*	-1.228(.3976)*	-.9804 (.3250)*
Accession	-.1830(.2541)	-.3112(.3041)	-.2610 (.2548)
Succession	-.1.086(.6335)*	-1.144(.3706)*	-.7584(.3593)
Polity2	-.0033(.0054)	-.0004(.0492)	-.0117 (.0107)
Durability	.0044(.0011)	.0016(.0016)	-.0021(.0018)
GDP	-.0000(.0000)	-0000(.0000)	.0000(.0000)
Population	.0000(.0000)*	.0000(.0000)*	.0000(.0000)
INGOs	-.0019(.0002)*	-.0013(.0002)*	-.0015(.0002)*
Interstate War	.0962(.4307)	.2792(.4729)	.2488(.5458)
Civil War	.7983(.1558)*	.9036(.1950)*	1.045(.1686)*
Observations	3730	1293	2437
Log pseudolikelihood	-6194.1104	-2241.1789	-4233.3061

* p<.05, regular coefficients, robust standard errors in parentheses ordinal logit regression run on STATA 13.0. For these models a democracy is defined as a state receiving 6 or higher on the Polity IV polity2 measure, non-democracies are states with below 6 on the polity2 measure.

Table 12 presents the statistical findings of an ordered logit regression modeling the determinants of political rights. This table focuses on the relationship between commitment actions and rights levels, by regime type. Model 1 includes all countries, Model 2 includes only democracies, and Model 3 includes only non-democracies. Democracy is coded as a country-year when a state received a 6 or higher on the Polity2 scale. Non-democracy is coded as a country-year when a state received 5 or below on the Polity2 scale. Separating out observations by regime type allows me to model whether committing to the ICCPR has a different

relationship with compliance behavior in democracies than non-democracies. In comparing the statistical significance of the commitment actions of ratification, signature, accession, and succession, the findings present a startling lack of difference across democracies and non-democracies. Ratifying the ICCPR was never a statistically significant indicator of improved political rights. In sharp contrast, signing the ICCPR was statistically significant and associated with lower levels of rights abuses across all country models. This means that even when a non-democratic state signed the ICCPR, its rights behavior was likely to improve.

The next two tables (Tables 13 and 14) further analyze non-democracies by exploring the role of legislative barriers in explaining compliance levels. I analyze democratic states and then non-democratic states to compare the effects of legislative barriers on approaches to international legal commitment across regime type. Doing so allows me to test whether legislative barriers to ratification matter in non-democratic states in similar ways they matter in democratic states.

In Table 13, I only include democratic states. In Model 1, I analyze states with domestic legislative barriers to ratification. In Model 2, I analyze states without domestic legislative barriers to ratification. In separating out these state groups, I can analyze whether commitment actions to international human rights treaties have differential effects on states by the involvement of the legislature in ratification approval. I find that in democracies with legislative barriers to ratification signing the ICCPR was a significant indicator of political rights levels.

Table 13: ICCPR and Determinants of Political Rights 1977-2006, Democracies

	Model 1	Model 2
<u>Explanatory Variable</u>	<u>Barrier States</u>	<u>Non-Barrier States</u>
Ratification	.4139(.5185)	-.1443(.6119)
Signature	-1.809(.5935) ***	-.7219(.6147)
Accession	-.4439(.3725)	-.55070(.5225)
Succession	-1.391(.7622)*	-.8752(.5353)*
Polity2	.0121(.0596)	-.0004(.0658)
Durability	.0009(.0020)	.0041(.0026)
GDP	-.0000(.0000)	-.0000(.0000)
Population	.0000(.0000) **	.0000(.0000) **
INGOs	-.0018(.0003) ***	-.0015(.0005) **
Interstate War	1.810(.3707) ***	-.2558(.4899)
Civil War	.7562(.2778) ***	.6336(.3506)*
Observations	734	609
<u>Log pseudolikelihood</u>	<u>-1139.717</u>	<u>-1084.3561</u>

* p<.05, regular coefficients, robust standard errors in parentheses ordinal logit regression run on STATA 13.0. For these models a democracy is defined as a state receiving 6 or higher on the Polity IV polity2 measure, non-democracies are states with below 6 on the polity2 measure.

After democracies with ratification barriers signed the ICCPR, they were likely to reduce the violations of political rights. This relationship did not hold for democracies without legislative barriers to ratification. Signature was not statistically significant in Model 2.

Table 14: ICCPR and Determinants of Political Rights 1977-2006, Non-Democracies

	Model 1	Model 2
<u>Explanatory Variable</u>	<u>Barrier States</u>	<u>Non-Barrier States</u>
Ratification	.1947(.4505)	.7387(.8466)
Signature	-1.395(.4376) ***	-1.007(.8511)
Accession	-.2839(.3136)	-.55070(.5225)
Succession	-1.237(.5759)***	-.4255(.4796)
Polity2	-.0095(.0172)	-.0166(.0197)
Durability	-.0006(.0024)	.0007(.0029)
GDP	-.0000(.0000)	-.0000(.0000)
Population	.0000(.0000)	.0000(.0000)
INGOs	-.0018(.0003)***	-.0018(.0005)***
Interstate War	.6549(.7136)	-.2882(.8311)
Civil War	.9983(.2160)***	1.102(.3159)***
Observations	1242	878
<u>Log pseudolikelihood</u>	<u>-1006.5695</u>	<u>-1594.0942</u>

* p<.05, regular coefficients, robust standard errors in parentheses ordinal logit regression run on STATA 13.0. For these models a democracy is defined as a state receiving 6 or higher on the Polity IV polity2 measure, non-democracies are states with below 6 on the polity2 measure.

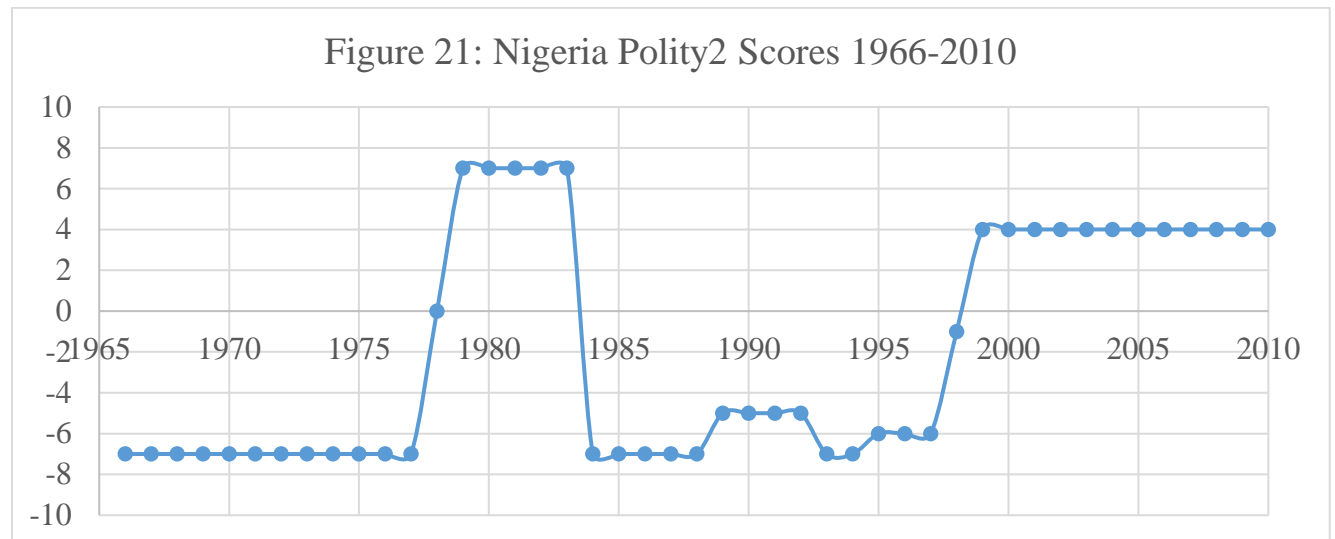
In Table 14, I only include non-democratic states. In Model 1, I analyze states with domestic legislative barriers to ratification. In Model 2, I analyze states without domestic legislative barriers to ratification. I find that in non-democracies, signing the ICCPR was a significant indicator of lower levels of political rights violations. The statistical significance of signature did not carry through to the non-barrier states in Model 2.

The results presented in Tables 12-14 lend support to findings presented in Chapters 3-6, highlighting signature as a significant turning point in state rights practices and compliance with international human rights law. Interestingly, the distinction between barrier and non-barrier states extends beyond democracies to non-democracies. States that signed the ICCPR were more likely to demonstrate a statistically significant decrease in rights violations following signing the treaty. This commitment effect did not carry through to ratification of the ICCPR. Similar to the democratic states models, ratification did not have any significant effect on rights levels. These findings support Hypothesis 2 stating that if a state has legislative barriers to ratification, then changes in compliance behavior will happen after signature.

Nigeria: Legislative and Executive Involvement in the Convention on the Rights of Persons with Disabilities

To unpack the findings presented above, I examine the case of Nigeria and its commitment and following steps towards compliance with the CRPD. Nigeria offers an example of an authoritarian state with a constitution requiring legislative approval for treaty ratification and legislative incorporation of treaties before they can be enforced in domestic law. The legal tradition of Nigeria draws heavily on a common law heritage from Great Britain and is depicted as a dualist system “with some monist considerations” (Akinrinade 2011, 467). The figure below graphs the Polity2 scores of Nigeria from 1966 to 2010. The scale ranges from positive 10, the most democratic, to negative 10, the least democratic. The score of 6 and above on the Polity2 scale are considered democratic years while years coded at 5 or below are non-democratic years. During 1966-2010, Nigeria reaches the threshold for democracy only during

the years 1979-1983. The next time the score progresses towards democracy is 1999 following the transition away from militaristic rule. Since the transition, Nigeria has been stable at 4 on the scale, which remains below the threshold to be considered a democracy on this scale.



Domestic Law on Ratification and Incorporation

The Nigerian Constitution grants the legislature the authority to ratify international treaties “No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.”¹⁴¹ Earlier Nigerian constitutions did not specify ratification and treaty-making power, rather they focused on treaty-implementation (Olutoyin 2014, 10). The Nigerian Constitution requires legislative implementation of treaties before they go into effect. In the 1986 Nigerian Supreme Court Case *African Reinsurance Corporation v Abate Fantaye*¹⁴² a judge opined that “treaties do not constitute part of the law of the land merely by virtue of their conclusion by a country”

¹⁴¹ Constitution of the Federal Republic of Nigeria of 1999 Chapter I. Part II. 12(1).

¹⁴² *African Reinsurance Corporation v Abate Fantaye* [1986] 3 NWLR (Pt 32) 811, 834.

implying that without legislative incorporation, a ratified treaty does not come into force (Akinrinade 2011, 454).

The legislature's role was formalized in the 1999 Constitution put in place after a transition to a more democratic regime. The 1999 election was the first free election in Nigeria since military rule 16 years prior (Freedom House 2001). The government moved towards the recognition and implementation of human rights. In 2000, the Nigerian National Human Rights Commission convened a special meeting of parliament, the Parliamentary Hearing on the State of the Promotion and Protection of Human Rights in Nigeria. This session was planned to “familiarize members of the National Assembly, Government Ministries, Service Chiefs and organized private sector” (Federal Republic of Nigeria 2006, 5). Nigeria sought out the legal guidance of Australia and together hosted a workshop on regional and international human rights treaties. Freedom House commented that “respect for human rights has improved considerably under Obasanjo” with the Human Rights Violations Investigation Commission hearing over 100 cases in its first year (Freedom House 2001).

Table 15: Nigeria Commitment Actions toward United Nations International Human Rights Law

Treaty	Commitment	Year	Years after opening
ICCPR	Accession	1993	27
CERD	Accession	1967	1
ICESCR	Accession	1993	27
CAT	Signature	1988	3
	Ratification	2001	16
CRC	Signature	1990	11

	Ratification	1991	12
CEDAW	Signature	1984	4
	Ratification	1985	5
CMW	Accession	2009	13
CRPD	Signature	2007	0
	Ratification	2010	3
CED	Accession	2009	2

Treaty Examination: Convention on the Rights of Persons with Disabilities

On March 30, 2007, Nigeria signed the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and the accompanying optional protocol. The treaty had been a long time coming within the United Nations framework. One of the earliest efforts within the United Nations in the disability rights area was the Declaration on the Rights of Mentally Retarded Persons in General Assembly resolution 2856 (XVI) in 1971 followed in 1975 by the Declaration on the Rights of Disabled Persons in General Assembly resolution 3447(XXX). The 1980s were declared the United Nations Decade of Disabled Persons, which concluded with a working group to establish standards for disabled individuals (Economic and Social Council resolution 1990/26). The United Nations did not call for a draft convention on disability rights until 2001. The General Assembly adopted the CRPD in 2006, United Nations General Assembly resolution 61/106. The treaty defines discrimination on the basis of disability as:

Any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal

basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation. (CRPD Article 2)

Examining the CRPD provides insight into how a non-democratic, state in transition engages with commitment, implementation, and compliance with international human rights law.

Implementation

Implementing legislation was sent to from the Nigerian National Assembly to two Presidents on separate occasions. In 2006, the National Assembly presented a bill implementing the provisions of CRPD to then President Olusegun Obasanjo for approval and assent, called “An Act to Ensure Full Integration of Persons with Disabilities into the Society and to establish a National Commission for Persons with Disabilities and Vest it with the Responsibilities for their Education, Health Care and the Protection of their Social, Economic, Civil Rights.”¹⁴³ President Obasanjo refused to sign the bill into law. No formal statement explained the president’s lack of support for the Bill. Local sources cited his focus on stabilizing the administration during threats to power during the time.

Following President Obasanjo’s removal from office, the National Assembly reconsidered the bill and was required to pass it once again after its previous version was rejected. Next, the Nigerian legislature sent the newer version of bill to President Goodluck Ebedle Jonathan multiple times. He also refused to assent to the bill from sent from the National Assembly which would implement provisions of the CRPD.

¹⁴³ <http://guardian.ng/features/law/persons-with-disabilities-bill-and-the-burden-of-presidential-assent/>

Despite the unwillingness of executives to implement provisions of CRPD domestically through national policy, President Goodluck Edeble Johnathan was eager to showcase the treaty's ratification to the international community. In a 2011 speech to the United Nations General Assembly, President Johnathan touted the CPRD ratification as a demonstration of Nigeria's commitment to human rights.¹⁴⁴

Academics remained skeptical about the ability of Nigeria to advance the principles of the CRPD without implementing legislation: "Until the Nigerian Government has passed disability discrimination legislation, and developed an effective and efficient administrative infrastructure for its effective implementation, it will be virtually impossible for Nigeria to ratify the UN Convention on the Rights and Dignities of Persons with Disabilities" (Lang and Upah 2008, 7). However, even without the implementing legislation, the National Assembly was able to ratify the treaty in 2010. "It will be many years hence before this is enacted" (Lang and Upah 2008, 26-27). This held true.

Post-Commitment Actions

Nigeria signed and ratified CRPD without submitting any post-commitment actions to the treaty. This is somewhat surprising given Nigeria's strong support of Shari'a law, especially in the Northern States. Nigeria did not use the post-commitment action mechanism to make reservations to any terms of the treaty that conflicted with Shari'a law. The post-commitment action process would have allowed the heads of state to express, through international legal mechanisms, their hesitance to implement the treaty by grounding such reservations in domestic

¹⁴⁴ Goodluck Ebele Jonathan, President of the Federal Republic of Nigeria at the 66th United Nations General Assembly, 21 September 2011. United Nations Headquarters New York , New York.

law, religious reasons, or cultural explanations. The lack of post-commitment actions made by Nigeria aligns with Neumayer (2007) finding that more democratic states are more likely to lodge the actions of reservations, understandings, or declarations to human rights treaties.

Implementation and Compliance

As discussed above, the Nigerian National Assembly confronted difficulties in getting CERD implementing legislation approved by the heads of state. In addition to this obstacle of compliance, implementing disability rights as human rights ran counter to the existing frame of disabled persons in Nigeria. The traditional approach to people with disabilities in Nigeria was one based on family networks and viewed individuals through a charity framework rather than a human rights one (Sango 2013: Lang and Upah 2008: Mwenda, Murangira, and Lang 2009). This contrasted with the framing of the CRPD, shifting away from a charity and medical based understanding of people with disabilities and adopting a human rights model which “views people with disabilities as rights holders and members of our respective societies who are often more disabled by the physical and attitudinal barriers societies erect to exclude and stigmatize them than by their own physical or mental condition” (Kanter 2007, 291)

Despite these the unwillingness of two presidents to implement the treaty and the clash of the new human rights disability frame versus a traditional frame, overall, the international community has observed an overall improvement in disability rights.

How is it possible that disability rights could improve despite the lack of implementing legislation and executive support? Although the National Assembly was not able to improve the treatment of persons with disabilities via the implementation of national policy, the public discussions and support of the treaty allowed national groups to advance programs at the state and local levels in Nigeria, effecting some positive degree of change and compliance following

treaty signature. In speaking to the United States Committee on Foreign Relations, former executive director of the (U.S.) National Council on Independent Living Mark Lancaster identified Nigeria as making strides towards compliance with CRPD: “Nigeria, a country that has a history of serious discrimination against children with albinism, has created a ministerial committee on albinism since their ratification of the treaty.”¹⁴⁵ Lang and Upah find that, after signature of CERD, “states have enacted disability legislation” (Lang and Upah 2008, 28).

In rejecting bills implementing the terms of the CRPD, even after signing and ratifying the treaty, Nigerian presidents brought the treaty and its issues to center stage in the domestic press. The differences between the terms of the treaty, the will of the National Assembly, and the rhetoric of the president in the international arena became a notable motivator for domestic level disability rights groups. There are a “plethora of DPOs (disability people’s organizations) in Nigeria that operate at the national, state and local levels” (Lang 2014:13). Disability advisors have been appointed in 9 out of Nigeria’s 36 states (Asiwe and Omiegbe 2014, 520). The Ministry of Women Affairs and Social Development created a community based rehabilitation program with centers in 23 states. In 2011, the state of Lagos passed the Lagos State Special Peoples’ Bill in the State House of Assembly, making Lagos the “first state in Nigeria to promulgate a law specifically aimed at demonstrating the CRPD and similar normative standards” (Asiwe and Omiegbe 2014, 520). Establishing such offices and measures brings these parts of Nigeria in compliance with part of the CRPD that requires government focal points for matters relating to the Convention (Article 33.1).

¹⁴⁵ Testimony of John Lancaster before the Foreign Relations Committee of the United States Senate Regarding the Convention on the Rights of Persons with Disabilities Thursday July 12, 2012.
http://www.foreign.senate.gov/imo/media/doc/John_Lancaster_Testimony.pdf

NGOs and other domestic groups were able to carry out some CRPD provisions, advancing disability rights. The Joint National Association of Persons with Disabilities (JONAPDW) successfully lobbied to amend Section 57 of the 2004 Electoral Act to ensure disabled persons in Nigeria can vote in election. This revision was reflected in the 2010 Electoral Act (Federal Republic of Nigeria 2010; Policy and Legal Advocacy Centre 2015). In 2006, another prominent DPO emerged, the Association for Comprehensive Empowerment of Nigerians with Disabilities (ASCEND). ASCEND along with the Mobility Aid and Appliances Research and Development Centre (MAARDEC) presented a disability rights bill to the National Assembly.¹⁴⁶ These and other DPOs remain active, however face organizational, governance, and funding constraints that limit their ability to promote disability rights (Lang and Upah 2008, 20). Coalitions for Change formed in 2007 in response to a belief that the Nigerian government had not fulfilled its obligations to disabled persons. Individuals with disabilities established NGOs helping other persons with disabilities such as the Hope for the Blind Foundation in Zaria, the Kano Polio Victims Trust Association, the Albino Foundation, and the Comprehensive Empowerment of Nigerians with Disabilities (US State Department 2011, 55)

Because Nigeria signed the CRPD, signaling support, international actors were able to supply training and support in the area of disability rights without noted contestation from the Nigerian government. The United Nations supports and funds these local, bottom-up approaches following CRPD creation. For example, the United Nations Development Program partners with local organizations to promote advocacy training and “make people see disability as a human rights issue” (UNDP 2016). In training activists and/or individuals with disabilities, the UNDP realizes an obligation articulated in CRPD Article 4 calling on states to “promote the training of

¹⁴⁶ http://www.huffingtonpost.com/cosmas-i-b-okoli/racing-towards-rights-for_b_1499400.html

professionals and staff working with persons with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights” (CRPD Article 4(i)) and “awareness-training programmes” called for in Article 8(d).

Discrimination against persons with disabilities intersects with both women’s and children’s rights. In stating the general principles of the treaty, Article 3 recognizes equality between men and women (Article 3(g)) and children with disability rights (Article 3 (h) as important components of the treaty. Activist groups have highlighted these issues of intersectionality in their advocacy work: “We are tired of the exclusion and discrimination of women with disabilities in the country. What we want from government is inclusion of women with disabilities and free education for women with disabilities” stated activist Lois Auta of the Cedar Seed Foundation, drawing attention to the intersectionality of these issues during a celebration of International Women’s Day in Nigeria.¹⁴⁷ Women living with disabilities in Nigeria are disproportionately likely to experience gender-based violence during times of conflict, but are “less likely to be able to escape, speak up, to be believed” (The Guardian 2015). According to a survey conducted by the Nigeria Stability and Reconciliation Programme, almost 90% of respondents viewed the impact of conflict on women with disabilities as “severe” or “very severe” (NSRP 2015).

Mobilization in Nigeria around CRPD in a large part, centered on parts of the treaty centering on education. Based on the traditional view of persons with disabilities as “charity cases” coupled with poor infrastructure, attending school is difficult for children with disabilities in Nigeria. Historically, Nigerian disability policy relating to education was directly influenced by international conventions, guidelines, and directives rather than driven by domestic politics

¹⁴⁷ <http://drpi.research.yorku.ca/nigeria-women-with-disabilities-urge-jonathan-to-sign-disability-bill/>

alone (NTI 2011). Following and prompted by the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993) and the Declaration on the Rights of Disabled (1995) Nigeria enacted the Nigerians with Disability Decree (1993).

Nigerian Compliance in Context

In Nigeria, the legislature took on a different role than that in the United States. Both states require legislative approval for ratification and legislative implementation to enact provisions of international treaty law. The primary difference between the experiences of the two states is that the United States has been a stable democracy for over two hundred years, while Nigeria is, within the last 20 years, transitioning to a democracy from decades of military rule. In the United States, the legislature acted as a conservative constraint on executives pushing a human rights agenda and pushing for acceptance of international human rights law. The U.S. Senate acted to delay ratification and, at times, stall implementation of treaties into domestic law. In Nigeria, I find a very different role of the legislature concerning international human rights treaties. The Nigerian National Assembly advanced numerous bills to enact the CRPD and supported treaty ratification. The barrier to full compliance was the executive, rather than the legislature. Two Nigerian presidents refused to approve the enacting legislation to CRPD even after the National Assembly negotiated, drafted, and voted in support of the legislation on numerous occasions.

The executive did not, as in the case of the United States, begin moving to implement and comply with the treaty prior to gaining full legislative backing for ratification. The executive blocked the national-level implementation of the CRPD. While the national-level bill approved

by the Nigerian National Assembly has yet to enter into effect, the legislature served an important role as did the act of signing the CRPD.

Signing the CRPD brought the treaty and Nigerian disability rights issues to the forefront of domestic and international recognition. In signing the CRPD in 2007, however insincerely, the Nigerian government opened itself to support from the United Nations and other programs promoting disability rights. The President could not contest the programs as imposing outside or Western rights into Nigeria because he had already committed via signature to the treaty. While signing the treaty did not trigger executive measures to enact the treaty, it allowed for international development measures to send aid and programs into Nigeria and enact parts of the treaty. Signing the CRPD also legitimated the disability rights movement in Nigeria, fueling further domestic support and mobilization. Although the National Assembly was not able to enact the legislature it supported, the national government ended up promoting disability rights through small, funded programs through cabinets such as the Ministry of Women Affairs and Social Development. At the state level and community level, leaders were able to see signing the CRPD as a mark of support from the government and proceed with their own implementation independent from national-level implementation.

These push in Nigeria towards recognition of disability rights and compliance with CRPD has been far from perfect. Existing programs are criticized for lack of funding, cross-department or organization coordination, and results-based assessments. Article 31 of the CRPD calls for states to undertake data collection for statistical research for the better implementation of the Convention (Article 31.1). Such data collection is non-existent in Nigeria, with even the total number of persons with disabilities unknown. The World Health Organization generated a general estimate of persons living with disabilities in Nigeria, although no domestic assessment

has confirmed this number. For more rights coverage and advancement in programming for persons with disabilities, national-level implementation is needed as is additional funding for disability rights-related programming.

It is important to note that the Nigerian National Assembly has not always been progressive in supporting rights-based implementation of international law. The promotion of international human rights law has indeed been a mixed endeavor in Nigeria. Freedom House gave Nigeria positive marks for decreasing detentions without trial and repealing the suspension of constitutional guarantees for human rights, moving Nigeria towards compliance with the Convention on the Elimination of Enforced Disappearances. However, torture notably continued especially in oil-rich areas (Human Rights Watch 2005, 26). The Nigerian Senate voted down the Gender and Equal Opportunities Bill, 2016 (S.B.116). This bill was intended to implement CEDAW, which Nigeria ratified in 1985, and the Protocol to the African Charter on the Rights of Women in Africa, which Nigeria ratified in 2004. The bill failed to pass in the Senate, largely due to opposition from northern, predominately Muslim states, where Sharia law is dominant.¹⁴⁸ Although opposition came from multiple conservative religious groups, with several Senators reportedly citing the Bible as reason to oppose the Bill.¹⁴⁹

Conclusion

In this chapter, I found that commitment to international human rights law matters for compliance in non-democratic states. Through statistical analyses, I showed that signing human

¹⁴⁸ Henry Umoru & Joseph Erunke, Northern Senators Reject Bill on Gender Equality VANGUARD (Mar. 16, 2016).

¹⁴⁹ Yomi Kazeem, Nigerian Lawmakers Voted down a Women Equality Bill Citing the Bible and Sharia Law, QUARTZ (Mar. 15, 2016).
<http://www.loc.gov/law/foreign-news/article/nigeria-gender-equality-bill-fails-in-the-senate/>

rights treaties matters for non-democratic states, but only is a significant indicator of rights practices for states with legislative barrier to ratification. In exploring the case of the CRPD in Nigeria, I unpacked one possible mechanism behind the statistical finding. In great contrast to the democracies included in this study, the important function of legislative involvement was not in delaying treaty ratification, forcing the executive to signal earlier via signature than the legislature wanted to via ratification. In Nigeria, the executive signing CRPD opened the opportunity for the legislature to begin work on implementing the terms of the treaty domestically. Although the legislature was unable to implement the bills it agreed upon, the legislature nonetheless provided an essential function in promoting human rights improvements. Instead of serving the role of policy making, the legislature was able to serve the role of a formal forum much like legislatures in other states have done concerning economic agreements (Jensen, Malesky, and Weymouth 2014). In this way, legislatures in non-democratic states serve an important, but different role in promoting and enabling human rights than they do in democratic states.

CHAPTER 8

Conclusion

Almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time.

Louis Henkin¹⁵⁰

Fifty years ago, the preamble to the ICCPR proclaimed that the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” In the following five decades, the international community created 16 separate human rights agreements along with 11 additional optional protocols expanding on the coverage of human rights, the obligation of state parties, and the role of the United Nations in upholding global human rights standards. The international human rights framework is an ambitious one seeking to improve rights outcomes and change state behavior for the better. While some remain skeptical of the efficacy of this framework, international legal standards continue and new human rights treaties are created. International law broadly has become of increasing importance for domestic law, court decisions, and norms. This is particularly true concerning domestic rights decisions, with international law increasingly being cited concerning rights cases than other issue areas such as torts and property (Sandholtz 2015, 601). Human rights treaties remain important in domestic constitutions with human rights treaties mentioned by name more so than any other type of international agreement in a survey of domestic constitutions. Notably, the ICCPR and the Universal Declaration of Human Rights play

¹⁵⁰ Henkin, *supra* note 61, at 47.

“crucial roles in the spread of formal human rights into national constitutions” (Elkins, Ginsburg, and Simmons 2013, 61).

This dissertation project was motivated to shed light on the efficacy of the international legal system and human rights law in particular over the last 50 years as well as to examine the claim underlying the oft-quoted Henkin observation about compliance with international law. If states are, for the most part, observing principles of international law and meeting most obligations, why do scholars continue to find negative relationships between international legal commitment and compliance behavior, in particular, toward international human rights treaties?

The conclusions of this project should not be misunderstood. Committing to international law is not a solve-all for ending human rights violations. Even states characterized by high levels of human rights respect and international legal commitment are not impervious to criticisms on rights behavior. International organizations find Norway, described by the United States Department of State as “a country where there are few (human rights) abuses”¹⁵¹, in violation of human rights of immigrants, involuntarily deporting asylum seekers, and illegal prolonged detention by police.¹⁵² Domestic legislative barriers are not the only barriers states face in committing to international treaty law. Some executive branches and heads of state simply do not support human rights or specific human rights treaties. For example, Saudi Arabia remains vocal on its discrimination against women, issuing a statement in 2013 warning women that those driving automobiles would be punished.¹⁵³ Democracies are not immune from hostility towards international treaties. Notably, United States President Bush ‘unsigned’ the Rome Statute of the International Criminal Court. Nonetheless, treaty commitment continues to

¹⁵¹ <http://www.state.gov/documents/organization/220527.pdf>

¹⁵² <https://www.hrw.org/news/2010/02/09/eu-defer-hasty-returns-migrant-children>

¹⁵³ <http://www.cnn.com/2013/10/24/world/meast/saudi-arabia-women-drivers/>

be an important signal to both domestic and international audiences and the international human rights regime continues to provide an important framework for agreed upon standards of global rights practices.

Similarly, the conclusions of this study questioning the importance of ratification as an analytical point of compliance behavior do not call into question the importance of ratifying international law. Ratification serves many important functions even if significant changes in behavior do not occur immediately afterward. Once a state legally binds itself to a treaty, certain obligations can be drawn upon in very significant ways. Even if states are not necessarily improving rights behavior in response to ratification, or even coinciding with it, once ratified, citizens can cite their state's international legal obligations to the treaty in court. Article 27 of the Vienna Convention on the Law of Treaties states that a state "may not invoke the provisions of its internal law as justification for its failure to perform a treaty." On paper, at least, ratifying human rights treaties has meaning, depth, and importance. It is not the intent of this study to detract from the many ways that ratification, as a commitment action, positively signals rights commitments and enables human rights NGOs to mobilize, individuals to bring grievances, and domestic judges, prosecutors, and lawyers to bring cases based on the legally binding commitment the state entered into. Nicholas Toonen, for example, was successfully able to challenge existing Tasmanian law criminalizing homosexual acts by citing Articles 17 and 26 of the ICCPR protecting privacy and discrimination based on sexuality, respectively, in *Toonen v Australia* (1994). As a result of this case, Australia passed a law overriding the 1924 Tasmania law criminalizing homosexual acts.¹⁵⁴ For Toonen and countless others in Australia Australian

¹⁵⁴ <https://www.humanrights.gov.au/human-rights-explained-case-studies-complaints-about-australia-human-rights-committee>

treaty ratification provided a gateway for individuals to ensure the domestic protection of human rights.

This conclusion serves three purposes. The first is to review the findings in the dissertation and in doing so position the human rights-based findings in a comparative perspective, across issue areas more broadly, and extend discussion to states not included in the analysis, in particular, non-democracies. The second goal of the chapter is to situate the dissertation findings within the academic literatures on commitment to and compliance with international human rights law. Finally, the last goal of the chapter is to discuss policy implications drawn from the findings. Committing to international law becomes, either directly or indirectly, a domestic policy issue. States must decide to commit or not to commit. Human rights law, in particular, addresses moral, ethical, and human quality of life issues. In examining compliance patterns with human rights law, conclusions and suggestions can be drawn on more thorough ways to assess changes governments make in response to supporting international law.

Commitment and Compliance and Process

This dissertation was motivated by the desire to dig deeper into the relationship between state commitment to and compliance with international law. Specifically, I focused on several questions. I asked why some states ratify human rights treaty law almost immediately and others take decades to do so. What does it mean for compliance that states can commit via signature, ratification, or both as a two-step process? The puzzle underlying studies of commitment and compliance with international law is a question of what effect international law can have on sovereign state behavior.

Thus far, studies from the fields of political science, international relations, and international legal studies consistently have found that ratifying international human rights treaties does not improve human rights behavior, and can, in fact, do more harm than good (e.g. Hathaway 2002). These findings have supported the general thrust of Hans Morgenthau's view on international law, addressing the post-World War II international legal system. In writing about international law, Morgenthau posited that "there can be no more primitive and no weaker system of law enforcement than this" (1993 [1948], 266) and that "considerations of power, rather than of law determine compliance" (268). However, the findings from this study point towards a reality closer to what Henkin described.

The conceptual and theoretical focus of this dissertation has been squarely on the domestic processes involved with human rights treaty ratification. I argue that to fully understand questions of commitment timing and compliance effect surrounding international treaty law, we must first take seriously the domestic institutional factors which for many states consist of arduous barriers to ratification. In focusing on the domestic process of treaty ratification, I place an importance in understanding the how as an important explanatory variable explaining the when and significance of ratification. While other studies have begun to explore dimensions of domestic legislative veto players and institutional components on delays in timing of ratification, the when question, scholars have yet to link how the delays correspond with observable compliance. If we know that the majority of states face institutional barriers and delays to ratification and that these barriers can effect timing of ratification, then we also need to understand how these processes effect changes in state behavior. There is a wide range of legislative involvement with treaty law. There are states where the legislature has no role in the ratification process. Treaties in these states can be ratified as quickly as the executive would like

to do so. Other states have highly engaged legislatures capable of delaying or blocking ratification all together. Some states also have legislatures involved in implementing treaty law into domestic law. This is a wide spectrum of legislative involvement contributes to the wide variation in timing of ratification.

It is no secret that it can be a long, arduous process getting any type of policy through the United States Senate. This has especially been the case when approaching international human rights law. For years, the United States even had a blanket policy against ratifying human rights law. What scholarship has engaged less with is the realization that the United States is not the only state facing difficult domestic legislative processes. For example, Argentina requires a majority approval vote of both houses of Congress for ratification and Denmark requires parliamentary approval with the potential of the additional ratification barrier of public referendum. In this dissertation, I explored how the role of the domestic legislature in ratification of international human rights treaty law impacted state behavior and trends in compliance.

I argued that the timing and extent of domestic legislative involvement in the treaty ratification process was important in understanding when and how states change behavior following commitment. I specifically argued that states confronted with domestic legislative barriers to ratification use signing treaty law as an important juncture of commitment, signaling the support of states' executive branches. As a result, signing becomes an important point against which to judge and assess changes in rights behavior.

I tested the relationship between signing international human rights and behavioral changes related to the ICCPR and CEDAW treaties in Chapter 3. I found that signature is statistically significant and associated with better rights. This finding only consistently holds for

states facing domestic ratification barriers. For states without these barriers, signature is not the significant point of change.

To further explore the relationship between domestic legislative involvement and treaty law, I explored the cases of the United States, the Netherlands, and Canada in Chapter 4, 5, and 6 respectively. The case analyses in this study provided insight into the domestic processes and barriers involved with international treaty engagement. The United States, The Netherlands, and Canada cases offered three different approaches to committing to and implementing international treaty law. Through the discussion of domestic ratification and implementation procedures, this chapter explored how legislative involvement with these processes affects a state's international legal engagement with international human rights law. The state with legislative involvement at both the ratification and implementation stages, the United States, faced the most significant delays and compliance criticisms. Alternatively, Canada was able to ratify treaties the fastest of the three cases as the legislature was not involved with treaty ratification. This chapter contributed to the scholarship on domestic politics and international relations by highlighting the role and importance of the legislature in treaty ratification and implementation and questioned, once again, the importance international relations places on ratification as the key marking point of change concerning international human rights treaties.

Across the dissertation analysis, I draw three primary findings.

First, legislative involvement provides domestic groups a political opportunity to air their grievances and delay or reject international legal policies they oppose. Individuals had more success lobbying legislatures than executives. This was the case in both the Netherlands and the United States, where the legislature must approve of ratification. The small, conservative SGP party was able to create a credible threat to a ratification vote in the Netherlands and delay the

ratification of CEDAW despite widespread support for women's rights. In the United States, Southern conservative groups in favor of racial discrimination were able to mobilize and voice their opposition of CERD to receptive legislators. This hostility towards racial equality contributed to the decades' long delay in United States CERD ratification.

Alternatively, groups in Canada had a harder time convincing the executive branch to alter its ratification behavior. Because the parliament did not serve an approving role in treaty ratification, groups voiced support of ratifying the optional protocol to CAT to the prime minister instead. Despite group mobilization, prime minister Stephen Harper did not ratify the CAT optional protocol.

Second, states tended to de facto incorporate international human rights law prior to ratification rather than post-ratification as their domestic laws would do automatically. The Dutch legislature set out to incorporate many facets of the CEDAW treaty prior to ratification. In the Netherlands, politicians explicitly voiced intention to implement the treaty with the goal of being in compliance before ratification. The United States implemented key elements of CERD into policy in the intervening years between signature and ratification. While the US Congress was less willing to explicitly draw on CERD prior to ratification than the Netherlands parliament was CEDAW, the executive branch of the United States continued to reference the CERD treaty and ways US policy met provisions within it following signature.

Thus far, scholarship has generally focused on post-ratification changes as defining compliance. Understanding that some states work for compliance prior to ratification is important to know when assessing compliance and it is an important consideration when thinking conceptually about when compliance happens. Does a state have to have already ratified a treaty in order to be in compliance of it?

Third, ratification was not the key point of policy or behavioral change related to the treaty. In this study, I engaged how and when states do shift rights behavior. My findings pointed away from ratification as the important juncture in state rights behavior. This finding supports existing international relations and international law scholarship finding a negative or null relationship between ratification and compliance with international human rights law. Together with the existing literature, the findings from this dissertation call into question the importance placed on studying compliance tied to ratification as a fixed point and support a call to study ratification as an overall process, which allows for the consideration of compliance occurring before ratification. In an early critique of Hathaway (2002), perhaps the earliest and most expanded quantitative work engaging human rights compliance, Goodman and Jinks (2003) critique her work for using ratification to measure acceptance of international law, and state that ratification is not a “magic moment” (173). The authors, in fact, point to signature as an earlier point of treaty obligation (173). No research has yet followed through on exploring or analyzing the suggestion that signature commences the formal acceptance of international treaty law. My analysis is the first of its kind, focusing on the role of signature in formal commitment to international treaty law, and supports the argument that commitment is a process not a “magic moment” of ratification (Goodman and Jinks, 2003).

This was particularly of note for the United States and the Netherlands, where legislative approval is required for ratification. In both cases, policies were adopted or updated prior to ratification. Even with noted compliance issues related to the CRC, Canada also took steps towards meeting the treaty standards prior to ratification.

These findings point to a brighter outlook for the relationship between international law, state commitment, and compliance behavior. Based on current studies analyzing compliance

with human rights treaties, scholars have claimed a limited or lack of role of international law on state behavior. The findings of earlier, foundational, quantitative work testing the relationship between human rights treaty ratification and changes rights behavior led to pessimistic conclusions. Keith (1999) concludes that “overall, this study suggests that perhaps it may be overly optimistic to expect that being a party to this international covenant will produce an observable impact” (112). Hathaway also concluded that the non-compliance occurred following ratification writing that “The extent that noncompliance with many human rights treaties is commonplace” (Hathaway 2002, 2022). Both Keith (1999) and Hathaway (2002) caution against completely ruling out the role of ratification, offering that it is part of a process with ratification as “only the final step in a long socialization process” (Keith 1999, 113) and noting that “ratification of human rights treaties has an undetected long-term positive effect on individual ratifying countries” (Hathaway 2002, 2022).

The findings from this dissertation call the negative assessments into question. It turns out that earlier scholarship was correct in arguing that ratification is not necessarily a significant, magic moment, demarcating compliance shifts, and that compliance instead is part of a longer process. We can measure part of that process of change though analyzing timing of signature.

Linking into Bigger Themes

This study speaks to international relations literature on cooperation, credible versus cheap signaling, and international law. The findings carry important implications in the areas of international cooperation and institutional design.

Regime Strength

Thinking out how states approached commitment and compliance with international law taps into larger questions about state cooperation and international law. Downs, Rocke, and Barsoom (1996) question whether measures indicating treaty compliance actually mean states cooperated. They argue that compliance is not necessarily deep compliance and significant changes in behavior does not signify genuine international cooperation (Downs, Rocke, and Barsoom 1996). Thus far, there has been little evidence of compliance, deep or otherwise, with human rights treaties. A failure of compliance with the treaty law was seen as a failure to cooperate with the international human rights regime. What I find in this dissertation is that compliance can, and does, happen in some states. Is this deep compliance? Findings indicated that health indicators, education measures, levels of discrimination, and other broader rights measures changed around the time of signature. These are both broad and specific measures of changes in rights.

The good news about human rights treaty compliance may, in fact, be good news about international cooperation. Krasner (1982) defines international regimes as “principles, norms, rules and decision making procures around which actor expectations converge in a given issue-area” (185). Donnelly (1986) conceptualizes the international human rights regime as a regime with “normative strength and procedural weakness” based on “very limited implementation” (614). He argues that many states are successful in resisting a move towards implementing human rights norms and that “national commitment is the signal most important contributor to a strong regime” (Donnelly 1986, 633-635). Thus far, scholars have concluded a weak commitment of states towards human rights, at least measured by compliance with international treaty law. Hafner-Burton and Tsutsui (2005) describe state violations of human rights as

“epidemic” (1374). The authors write that “this rising gap between states’ propensity to join the international human rights regime and to bring their human rights practice into compliance with that regime challenges the efficacy of international law” (Hafner-Burton and Tsutsui 2005, 1374).

These authors question state support for the international human rights regime and in doing so call into question their sincere cooperation during drafting and committing to international human rights law. The authors also call into question the strength of the international human rights regime as a “weak regime” (Hafner-Burton and Tsutsui 2005, 1378). However, the findings in this dissertation call into question such conclusions. Compliance with human rights treaties is one strong measure of regime strength – compliance measures whether states commit and then improve their behavior. In this study, I find that states with legislative barriers to ratification, a majority of states within the international system, do in fact improve their behavior after committing to international human rights law. While typically the United States is highlighted by scholars and activists of a state failing to follow through with its commitment to human rights, what I have shown is that the United States has followed through with commitment. The United States worked within the international human rights regime through the negotiation and drafting of human rights treaties, committed to the treaties via the regime mechanisms, and then did improve its human rights behavior. Once a case shedding light on the weakness of the international human rights regime, the United States now offers an example of a state highlighting the strength of the human rights regime.

Credible Commitments and Cheap Signals

International law is often viewed as a mechanism through which to send cheap talk signals to the international community – “cheap” because of the lack of enforcement

mechanisms, deeming even binding commitment a potentially hollow gesture and “talk” because little evidence or motivation enticed states to walk the walk following ratification. Although more recent research does point to the potential effects of cheap talk (e.g. Tingley and Walter 2011) in international legal studies, non-binding commitment or statements are dismissed as cheap talk without potential to signal or alter behavior. However, increasingly commitment is viewed as more costly: “Because ratification is often politically expensive, and requires widespread domestic support, they are more credible than mere joint statements and similar memoranda. Thus, they can serve as signals” (Posner and Goldsmith 2000, 20). While there has been growing appreciation for the political costs of ratification and its potential to credibly signal government support, signature has been overlooked as a cheap signal with limited capability to signal credibly. The findings of this dissertation lend support for the argument that signing international law is not merely cheap talk – some states do, in fact, follow through with commitments. International law, then, can be seen as a legitimate way to credibly signal in the international arena, as Simmons (2000) contends: “Legalization is one way governments attempt to make credible their international monetary commitments.”

This dissertation project builds on the growing literature examining domestic veto players and domestic intuitional components involved in international legal decisions. This literature recognizes the difficulty, both time and political costs, involved in negotiating the commitment to international law at the domestic level.

Human Rights in a Broader Context

Most of this study has focused on human rights as an international legal issue area. The United Nations categorizes human rights treaties in its Treaty Collection in Chapter IX. There

are 28 other chapters of treaty categories and topics ranging from outer space, telecommunications, transport, and even treaties on the law of treaties. In short, there are many issue areas that international treaty law covers. Despite the differences across these issue areas, there is intrinsic value in taking knowledge of one area and applying it, at least conceptually and theoretically to other areas. This holds particularly true for the findings of this dissertation, which speak directly to domestic institutional barriers to ratifying international law. These domestic barriers hold across issue areas in states faced with them. In this section I address the following two questions: 1) what do the findings of this dissertation mean for other areas of international law? And 2) is the human rights issue area unique within international law?

Human rights treaty law covers a wide range of issues from torture, to voting and assembly rights, freedom from forced marriage and allowance to choose your spouse, racial and gender equality, and the rights of children. While all of these issues are specific in their own right, they all cover the treatment of individuals and recognize “the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” (UN Declaration of Human Rights Preamble 1948). Human rights are interdependent, indivisible, cannot be given or taken away¹⁵⁵ and apply during both war and peace.¹⁵⁶

Based on these definitions of human rights, human rights law covers an extensive area of state practice and behavior and in that regard differs from other, more specific, areas of international law such as international environmental law, within which there are set expectations about pollution rates. Human rights treaties bring with them vocal calls to action

¹⁵⁵ International Justice Resource Center <http://www.ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/>

¹⁵⁶ International Committee of the Red Cross <https://www.icrc.org/eng/resources/documents/misc/5kzmuy.htm>

from NGOs pushing for greater rights recognition and public opposition to sovereignty costs, while other areas like transportation or commercial arbitration that, by and large, come with less push from NGOs to ratify and less public controversy during negotiations and ratification.

Do these differences in content and reception of human rights treaties mean that states signal differently around human rights treaties versus other issue area treaties? States may, in fact, be particularly interested to signal support for human rights treaties as early as they can because of the publicity around human rights treaties and the vast presence of prominent human rights NGOs. Given this context, executives may have an especially high desire to signal commitment to human rights treaties before the legislature is ready to fully commit via ratification. In the comparison of commitment times of the United States, Netherlands, and Canada to disarmament treaties versus human rights treaties discussed in the Appendix, I found that the gap between barrier and non-barrier states was generally still present, but slim. This contrasted with the clear divide in barrier versus non-barrier state practices of early signature. Even given these potential differences in pressure and publicity across different issue areas, the findings from this dissertation have important implications on the study of issues beyond that of human rights. As seen in the Appendix, commitment timing with disarmament treaties varied from that of human rights commitment timing. Generally, states took longer to commit to human rights treaties and quickly committed to disarmament treaties. While the speed across issue areas differed, reflecting state attitudes to those specific issue areas and the level of controversy prompted by the treaties, patterns of commitment behavior when considering the relationship between signing and ratifying were more consistent when comparing human rights and disarmament treaties.

This suggests that the institutional requirement of legislative approval to ratification does frame the executive's capabilities to commit to international treaty law, and within that framework the executive may move particularly quicker to signal support for salient international treaty law issues. This is an area ripe for further research to test the across issue area comparison of signaling based on ratification requirements.

Beyond Democracies

Throughout the dissertation statistical analysis and in Chapter 7, I extended the analysis beyond democratic state case studies to a focus on non-democracies. I find that committing to international human rights law can be a significant indicator of human rights practices in non-democratic states. Even with the legislature unable to implement human rights law and the executive unwilling to do so, the hollow government gesture of commitment to human rights treaties allowed NGOs to mobilize around treaty themes and provided an entry point for international actors to provide training and rights promotion.

This finding compliments existing research focused on non-democratic commitment and compliance with human rights treaties. Prior work has tended to focus on the relationship between judiciary and head of state, assessing the capability of the judiciary to hold the executive accountable to the terms of international agreements s/he ratified (e.g. Vreeland 2008). This work highlighted an alternative way that international commitment matters on the ground even when states ratify for reputational gains. This finding supports Simmons (2009) argument that treaty commitment can enable and strengthen mobilization: "Key here is the legitimating function of an explicitly public commitment to a global standard. That commitment is used strategically by demandeurs to improve the rights which they have an interest" (15). Simmons

finds this to hold true for ratification as a public commitment action. The evidence in this dissertation lends credence to signature, despite its non-binding nature, also enables group mobilization towards compliance. This may be especially true in non-democracies or transitioning regimes where the general population may view signature and ratification equally as non-binding commitment gestures made by their heads of state.

Future Research and Conclusions

The academic and policy worlds focus on the concept of compliance. It is a buzz word in talking or writing about international law, and treaties in particular. And why not? A compliance focus, at its heart, is a focus on change. Have states changed their behavior before and after ratifying to international law? For many policy-makers and scholars, there was a clear point of commitment – ratification – and therefore a clear point against which to compare prior and post behavior.

This study challenges the assumption that ratification is the clear and only point against which to assess compliance. As a result of these findings, we should reconsider the existing scholarship on ratification and human rights treaties and reassess with signature and other commitment forms. This study did not quantitatively analyze the relationship between commitment, ratification barriers, and the CAT for example. Doing so would speak to a large set of literature and to relevant policy discussions.

Through this dissertation, I focused on state engagement with human rights treaties. It would be fruitful to assess the role of legislative barriers further in other issue areas of international law to build on the growing scholarship studying legislative veto players in state decision making. Human rights law commonly is compared alongside environmental law (e.g. Shelton 1992:

Zartner 2014) but it would also be of conceptual and practical interest to examine whether an involved legislature is as engaged with other areas of international law as well that may not be as salient to the domestic audience or constraining on the domestic leadership. In the appendix, I discuss and compare state commitment timing with disarmament treaties and find in general that barrier states are signing earlier but that there are important differences in timing and commitment amounts between the two issue areas.

Because signature was found to be an important way states committed to human rights law, it is important for scholars and policy makers alike to take a closer look at the action. If signing international law allows activists to better mobilize and make rights claims in non-democratic states, it would make sense for international organizations, other states, and domestic groups themselves to devote resources promoting signature. An authoritarian head of state may have less reticence about commitment if the goal is non-binding signature, where s/he can easily fall back on the legal definitions when violations arise, than in ratifying the treaty.

The finding of this dissertation is that signing international human rights has had positive impacts on human rights in most countries. This dissertation set out to explore the relationship between legislative involvement in treaties and compliance levels. Through quantitative analysis of two dominant human rights treaties, the ICCPR and CEDAW, along with case analysis of the United States, Canada, the Netherlands, and Nigeria, I found that the presence of legislative barriers to ratification significantly influenced when states shifted human rights practices for the better. States confronting delays to formal ratification took the action of signature seriously, bringing to implement relevant rights policies after signature and marching towards compliance in ways that international relations scholarship has yet to appreciate or study. From children's rights, civil liberties, women's rights, to the right to be free from racial discrimination, this

dissertation showed that state commitment to international law helped advance rights in these areas. Full compliance is rarely achieved, states can commit for insincere reasons, and the march towards rights promotion is a difficult one for the many activists, diplomats, lawyers, and especially the countless victims involved. Contrary to expectations in academia and elsewhere, states are, in general, marching in the right direction after committing to do so through international treaty law. The findings offer a hopeful depiction of state approaches to international legal commitment. Rather than international law always supported as hollow gesture, I find that Henkin's words did ring true – most states did, in fact, follow through with their legal obligations most of the time.

APPENDICES

Appendix Table 1: ICCPR States and Commitment Actions by Type

Signature	Ratification	Accession	Succession
Algeria (1968)	Algeria (1989)	Afghanistan (1983)	Bosnia and Herzegovina(1993)
Andorra (2002)	Andorra (2006)	Albania (1991)	Croatia (1992)
Argentina (1968)	Argentina (1986)	Angola (1992)	Czech Republic (1993)
Australia(1972)	Australia (1980)	Armenia (1993)	Montenegro (2006)
Austria (1973)	Austria (1978)	Azerbaijan (1992)	Serbia (2001)
Bahamas (2008)	Bahamas(2008)	Bahrain (2006)	Slovakia (1993)
Belarus (1968)	Belarus (1973)	Bangladesh(2000)	Slovenia (1992)
Belgium(1968)	Belgium(1983)	Barbados (1973)	TFYR Macedonia (1994)
Botswana(2000)	Botswana(2000)	Belize(1996)	
Bulgaria(1968)	Bulgaria(1970)	Benin(1992)	
Cambodia(1980)		Bolivia(1982)	
Chile (1969)	Chile (1972)	Brazil (1992)	
China(1998)		Burkina Faso (1999)	
Columbia(1966)	Columbia(1969)	Burundi(1990)	
Comoros(2008)		Cape Verde (1993)	
Costa Rica(1966)	Costa Rica (1968)	Cambodia(1992)	
Cuba(2008)		Cameroon(1984)	
Cyprus(1966)	Cyprus(1969)	Canada(1976)	
Denmark (1968)	Denmark (1972)	Central African Republic (1981)	
Ecuador (1968)	Ecuador (1969)	Chad(1995)	
Egypt (1967)	Egypt (1982)	Congo(1983)	
El Salvador (1967)	El Salvador (1979)	Cote d'Ivoire (1992)	
Finland(1967)	Finland(1975)	DPRK(1981)	
Germany (1968)	Germany (1973)	DPC(1976)	
Ghana(2000)	Ghana(2000)	Djibouti (2002)	
Guinea(1967)	Guinea(1978)	Dominica (1993)	
Guinea-Bissau(2000)	Guinea-Bissau (2010)	Dominican Republic (1978)	
Guyana(1968)	Guyana (1977)	Eritrea(2002)	
Honduras(1966)	Honduras(1997)	Estonia(1991)	
Hungary (1969)	Hungary (1974)	Ethiopia (1993)	
Iceland (1968)	Iceland (1979)	France (1980)	
Iran (1968)	Iran (1975)	Gabon (1983)	
Iraq (1969)	Iraq (1971)	Gambia (1979)	
Ireland (1973)	Ireland(1989)	Georgia (1994)	
Israel (1966)	Israel (1991)	Greece (1997)	

Italy (1967)	Italy (1978)	Grenada(1991)	
Jamaica (1966)	Jamaica(1975)	Guatemala(1992)	
Japan (1978)	Japan (1979)	Haiti(1991)	
Jordan (1972)	Jordan (1975)	India (1979)	
Kazakhstan (2003)	Kazakhstan (2006)	Indonesia(2006)	
Laos (2000)	Laos (2009)	Kenya (1972)	
Liberia (1967)	Liberia (2004)	Kuwait (1996)	
Luxembourg (1974)	Luxembourg (1983)	Kyrgyzstan (1995)	
Madagascar (1969)	Madagascar(1971)	Latvia (1992)	
Monaco (1997)	Monaco (1997)	Lebanon (1972)	
Mongolia (1968)	Mongolia (1974)	Lesotho (1992)	
Morocco (1977)	Morocco (1979)	Libya (1970)	
Nauru(2001)		Liechtenstein (1998)	
Netherlands (1969)	Netherlands (1978)	Lithuania (1991)	
New Zealand (1968)	New Zealand (1978)	Malawi (1993)	
Norway (1968)	Norway (1972)	Maldives(2006)	
Pakistan (2008)	Pakistan (2010)	Mali (1974)	
Palau (2011)		Malta (1990)	
Panama (1976)	Panama (1977)	Mauritania(2004)	
Peru (1977)	Peru (1978)	Mauritius(1973)	
Philippines (1966)	Philippines (1986)	Mexico (1981)	
Poland (1967)	Poland (1977)	Mozambique (1993)	
Portugal (1976)	Portugal 1978)	Namibia (1994)	
Romania (1968)	Romania (1974)	Nepal (1991)	
Russia (1968)	Russia (1973)	Nicaragua (1980)	
San Tome and Principe (1995)		Niger (1986)	
Senegal (1970)	Senegal (1978)	Nigeria (1993)	
South Africa (1994)	South Africa (1998)	Papua New Guinea (2008)	
Spain (1976)	Spain (1977)	Paraguay (1992)	
St. Lucia (2011)		ROK (1990)	
Sweden (1967)	Sweden (1971)	Moldova (1993)	
Tunisia (1968)	Tunisia (1969)	Rwanda (1975)	
Turkey (2000)	Turkey (2003)	Samoa (2008)	
Ukraine (1968)	Ukraine (1973)	San Marino (1985)	
UK (1968)	UK (1976)	Seychelles (1992)	
USA (1977)	USA (1992)	Sierra Leone (1996)	
Uruguay (1967)	Uruguay (1970)	Somalia (1990)	
Vanuatu (2007)	Vanuatu (2008)	Sri Lanka (1980)	
Venezuela (1969)	Venezuela (1978)	St. Vincent and the Grenadines (1981)	
		Sudan (1986)	
		Suriname (1976)	
		Swaziland (2004)	

		Switzerland (1992)	
		Syria (1969)	
		Tajikistan (1999)	
		Thailand (1996)	
		Timor-Leste (2003)	
		Togo (1984)	
		Trinidad and Tobago (1978)	
		Turkmenistan (1997)	
		Uganda (1995)	
		United Republic of Tanzania (1976)	
		Uzbekistan (1995)	
		Vietnam (1982)	
		Yemen (1987)	
		Zambia (1984)	
		Zimbabwe (1991)	

Cambodia committed through signature and then accession, the only state to do so.

Appendix Table 2. CEDAW States and Commitment Actions by Type

Signature	Ratification	Accession	Succession
Afghanistan (1980)	Afghanistan (2003)	Albania (1994)	Bosnia and Herzegovina (1993)
Argentina (1980)	Argentina (1985)	Algeria (1996)	Croatia(1992)
Australia (1980)	Australia (1983)	Andorra (1997)	Czech Republic (1993)
Austria (1980)	Austria (1982)	Angola (1986)	Montenegro(2006)
Barbados (1980)	Barbados (1980)	Antigua and Barbuda (1989)	Serbia(2001)
Belarus (1980)	Belarus (1981)	Armenia (1993)	Slovakia (1993)
Belgium(1980)	Belgium(1985)	Azerbaijan (1995)	Slovenia (1992)
Belize(1990)	Belize(1990)	Bahamas (1993)	TFYR of Macedonia (1994)
Benin(1981)	Benin(1992)	Bahrain (2002)	
Bhutan(1980)	Bhutan(1981)	Bangladesh (1984)	
Bolivia(1980)	Bolivia(1990)	Botswana(1996)	
Brazil (1981)	Brazil(1984)	Brunei Darussalam (2006)	
Bulgaria (1980)	Bulgaria (1982)	Burkina Faso (1987)	
Burundi (1980)	Burundi(1992)	Cabo Verde (1980)	
Cambodia (1980)		Cambodia(1992)	
Cameroon(1983)	Cameroon(1994)	Central African Republic (1991)	

Canada(1980)	Canada(1981)	Chad(1995)	
Chile (1980)	Chile(1989)	Comoros(1994)	
China(1980)	China(1980)	Cook Islands(2006)	
Colombia(1980)	Colombia(1982)	Cyprus(1985)	
Congo(1980)	Congo(1982)	DPRK (2001)	
Costa Rica (1980)	Costa Rica(1986)	Djibouti(1998)	
Cote d'Ivoire (1980)	Cote d'Ivoire (1995)	Equatorial Guinea (1984)	
Cuba(1980)	Cuba (1980)	Eritrea(1995)	
DRC (1980)	DRC (1986)	Estonia(1991)	
Denmark (1980)	Denmark(1983)	Fiji(1995)	
Dominica(1980)	Dominica(1980)	Georgia(1994)	
Ecuador(1980)	Ecuador(1981)	Iraq(1986)	
Egypt(1980)	Egypt(1981)	Ireland(1985)	
El Salvador(1980)	El Salvador(1981)	Kazakhstan(1998)	
Ethiopia(1980)	Ethiopia(1981)	Kenya(1984)	
Finland(1980)	Finland(1986)	Kiribati(2004)	
France(1980)	France(1983)	Kuwait(1994)	
Gabon (1980)	Gabon(1983)	Kyrgyzstan(1997)	
Gambia(1980)	Gambia(1993)	Latvia(1992)	
Germany(1980)	Germany(1985)	Lebanon(1997)	
Ghana(1980)	Ghana(1986)	Liberia(1984)	
Greece(1982)	Greece(1983)	Libya(1989)	
Grenada(1980)	Grenada(1990)	Liechtenstein(1995)	
Guatemala(1981)	Guatemala(1982)	Lithuania(1994)	
Guinea(1980)	Guinea(1982)	Malawi(1987)	
Guinea-Bissau(1980)	Guinea-Bissau(1985)	Malaysia(1995)	
Guyana(1980)	Guyana(1980)	Maldives(1993)	
Haiti(1980)	Haiti(1981)	Malta(1991)	
Honduras(1980)	Honduras(1983)	Marshall Islands(2006)	
Hungary(1980)	Hungary(1980)	Mauritania(2001)	
Iceland(1980)	Iceland(1985)	Mauritius(1984)	
India(1980)	India(1993)	Micronesia(2004)	
Indonesia(1980)	Indonesia(1984)	Monaco(2005)	
Israel(1980)	Israel(1991)	Morocco(1993)	
Italy(1980)	Italy (1985)	Mozambique(1997)	
Jamaica(1980)	Jamaica(1984)	Myanmar(1997)	
Japan(1980)	Japan(1985)	Namibia(1992)	
Jordan(1980)	Jordan(1992)	Nauru(2011)	
Laos (1980)	Laos(1981)	Niger (1999)	
Lesotho (1980)	Lesotho (1995)	Oman(2006)	
Luxembourg(1980)	Luxembourg(1989)	Pakistan(1996)	
Madagascar(1980)	Madagascar(1989)	Papua New Guinea (1995)	

Mali(1985)	Mali(1985)	Paraguay(1987)	
Mexico(1980)	Mexico(1981)	Qatar(2009)	
Mongolia(1980)	Mongolia(1981)	Republic of Moldova(1994)	
Nepal(1991)	Nepal(1991)	Samoa (1992)	
Netherlands(1980)	Netherlands(1991)	Seychelles (1992)	
New Zealand(1980)	New Zealand (1985)	Singapore (1995)	
Nicaragua(1980)	Nicaragua(1981)	Solomon Islands (2002)	
Nigeria(1984)	Nigeria(1985)	South Sudan (2015)	
Norway(1980)	Norway(1981)	St. Kitts and Nevis (1985)	
Palau (2011)*		St. Lucia (1982)	
Panama(1980)	Panama(1981)	St. Vincent and the Grenadines (1981)	
Peru(1981)	Peru (1982)	State of Palestine (2014)*	
Philippines(1980)	Philippines(1981)	Suriname (1993)	
Poland(1980)	Poland (1980)	Swaziland(2004)	
Portugal(1980)	Portugal(1980)	Syrian Arab Republic (2003)	
Republic of Korea (1983)	Republic of Korea(1984)	Tajikistan (1993)	
Romania (1980)	Romania (1982)	Thailand (1985)	
Russian Federation (1980)	Russian Federation (1981)	Timore-Leste(2003)	
Rwanda (1980)	Rwanda(1981)	Togo(1983)	
San Marino (2003)	San Marino (2003)	Turkey (1985)	
Sao Tome and Principe (1995)	Sao Tome and Principe (2003)	Turkmenistan (1997)	
Saudi Arabia (2000)	Saudi Arabia (2000)	Tuvalu(1999)	
Senegal (1980)	Senegal (1985)	United Arab Emirates (2004)	
Sierra Leone (1988)	Sierra Leone (1988)	Uzbekistan(1995)	
South Africa (1993)	South Africa (1995)	Vanuatu(1995)	
Spain (1980)	Spain (1984)	Yemen (1984)	
Sri Lanka (1980)	Sri Lanka (1981)	Zimbabwe (1991)	
Sweden (1980)	Sweden(1980)		
Switzerland (1987)	Switzerland (1997)		
Trinidad and Tobago (1985)	Trinidad and Tobago (1990)		
Tunisia(1980)	Tunisia(1985)		
Uganda (1980)	Uganda (1985)		
Ukraine(1980)	Ukraine (1981)		

United Kingdom (1981)	United Kingdom (1986)		
United Republic of Tanzania (1980)	United Republic of Tanzania (1985)		
United States of America (1980)			
Uruguay (1981)	Uruguay(1981)		
Venezuela (1980)	Venezuela (1983)		
Viet Nam (1980)	Viet Nam (1982)		
Zambia (1980)	Zambia (1985)		

Cambodia committed through signature and then accession, the only state to do so.

*these states committed to CEDAW, but are not included in the analysis in this chapter due to the commitment coming after 2006 (for statistical analysis) and 2010 (for descriptive analysis)

Table 3: Change in Predicted Probability of Political Rights								
	1	2	3	4	5	6	7	Average Change
Ratification	-.0428	-.0187	-.0017	.0038	.0121	.0252	.0221	.0181
Signature	.1414	.0457	-.0023	-.0168	-.0392	-.0709	-.0579	.0535
Succession	.2361	.0256	-.0237	-.0356	-.0588	-.0843	-.0593	.0748
Accession	.0325	.0125	.0003	-.0035	-.0093	-.0177	-.0148	.0129

Table 4: Change in Predicted Probability of Civil Liberties								
	1	2	3	4	5	6	7	Average Change
Ratification	-.0272	-.0333	-.0135	.0036	.0255	.0250	.0199	.0211
Signature	.1174	.1140	.0264	-.0287	-.0926	-.0778	-.0586	.0737
Succession	.1136	.0893	.0046	-.0362	-.0779	-.0552	-.0381	.0593
Accession	.0274	.03010	.0010	-.0058	-.0245	-.0216	-.0164	.0195

FIGURE 1: CHANGES IN PROBABILITY OF POLITICAL RIGHTS

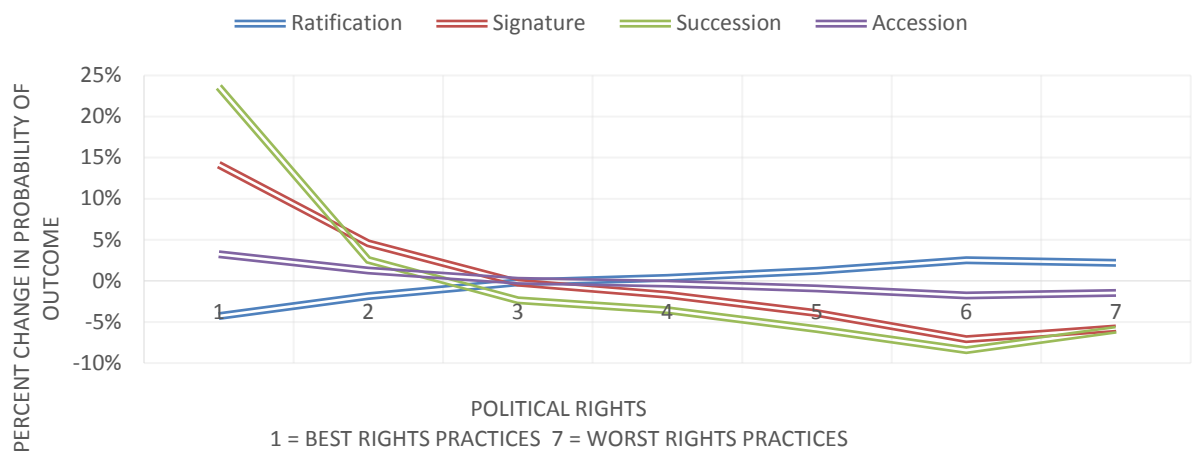
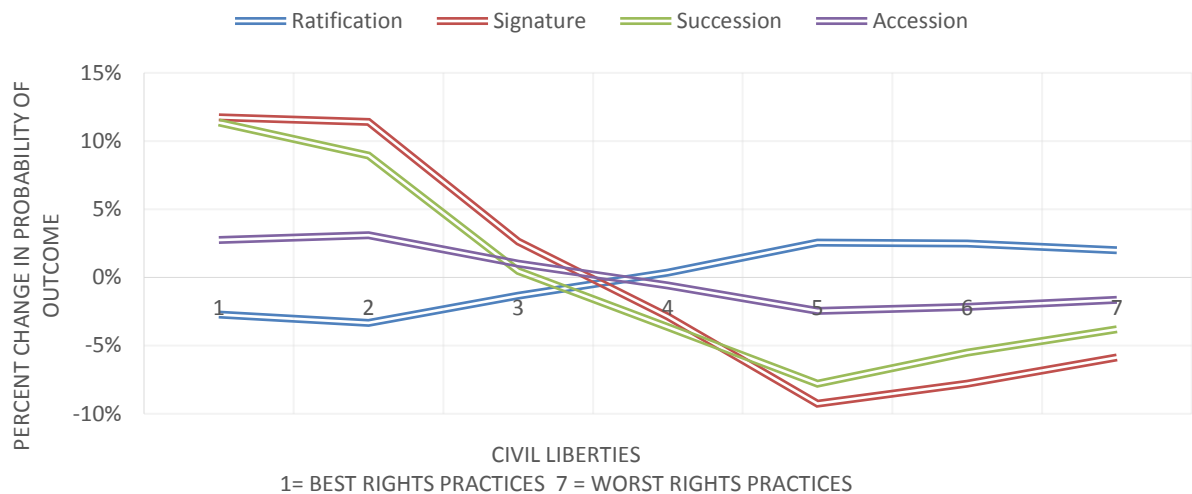


FIGURE 2: CHANGES IN PROBABILITY OF CIVIL LIBERTIES



Comparing Human Rights with Disarmament Treaties

This dissertation primarily examines international human rights treaties. However, human rights is only one issue area covered by international law. While many scholars have examined facets of human rights law, it is rare for a study of international law to be conducted cross-issue area. In this section, I situate the state commitment practices of the United States toward human rights and disarmament treaties to offer a comparison in commitment behavior.

I gathered commitment timing from the United Nations Multilateral Treaties Deposited with the Secretary General (MTDSG) database. I include the 9 United Nations human rights treaties identified by the United Nations as core human rights treaties as well as 7 United Nations disarmament treaties, all of the disarmament treaties opened to all United Nations state members. Examining state commitment to these 16 treaties allows me to situate the United States', the Netherlands', and Canadian behavior 1) across issue areas and 2) within the broader universe of state commitment behavior. In doing so, I can assess whether state trends across human rights treaties are consistent across another issue area and whether the United States behavior is unique when compared with the timing of other states in committing to human rights and disarmament treaties.

In considering the core United Nations human rights treaties it did commit to, the United States signed notably earlier than it ratified. The United States took, on average, 21.3 years to ratify and 4.8 to sign after the treaties opened for signature. On average, there was a 16-year gap between signature and ratification. The difference in timing of signature and ratification is most stark when examining CEDAW and CERD. The United States signed CERD in 1966, the year it opened for signature. It took 28 years, until 1994, for the United States to ratify. Similarly, the United States signed CEDAW the year it opened in 1980. The United States has yet, as of 2016,

to ratify it. The average amount of time it took states to sign the CERD was 6.8 years. The average amount of time it took states to ratify CERD was 11 years. The average amount of time it took states to sign CEDAW was 1.6 years. The average amount of time it took states to ratify CEDAW was 5.3 years. The United States signed earlier than average for both treaties and ratified later than average for the CERD, and has yet to ratify CEDAW.

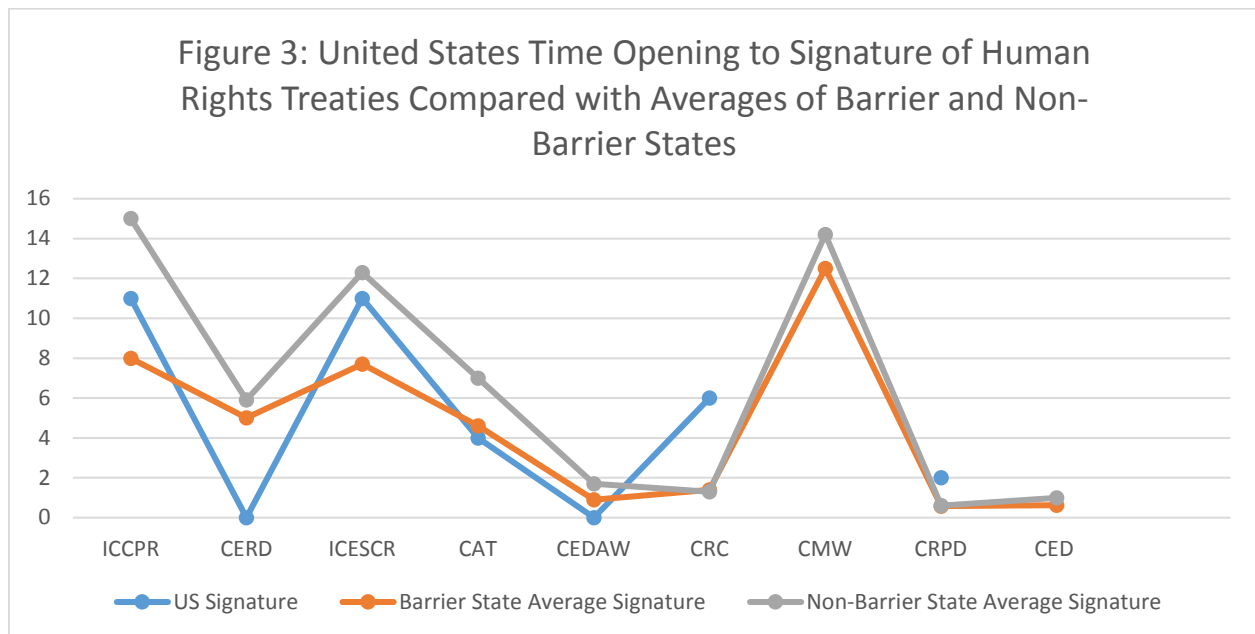


Figure 3 shows the United States time, in years, from opening of human rights treaties for signature and compares the timing with the average time, in years, of barrier states and non-barrier states. The United States signed 7 out of 9 of the core treaties examined in this study. Of those treaties it signed, the United States signed 5 treaties faster than non-barrier states: the ICCPR, CERD, ICESCR, CAT, and CEDAW. The United States took longer to sign the CRC and CRPD than barrier and non-barrier states, on average, and did not sign the CMW or the CED.

As expected based on my argument that states with legislative barriers to ratification will sign treaties earlier than states without barriers, the United States did sign most of the treaties earlier than states without barriers.

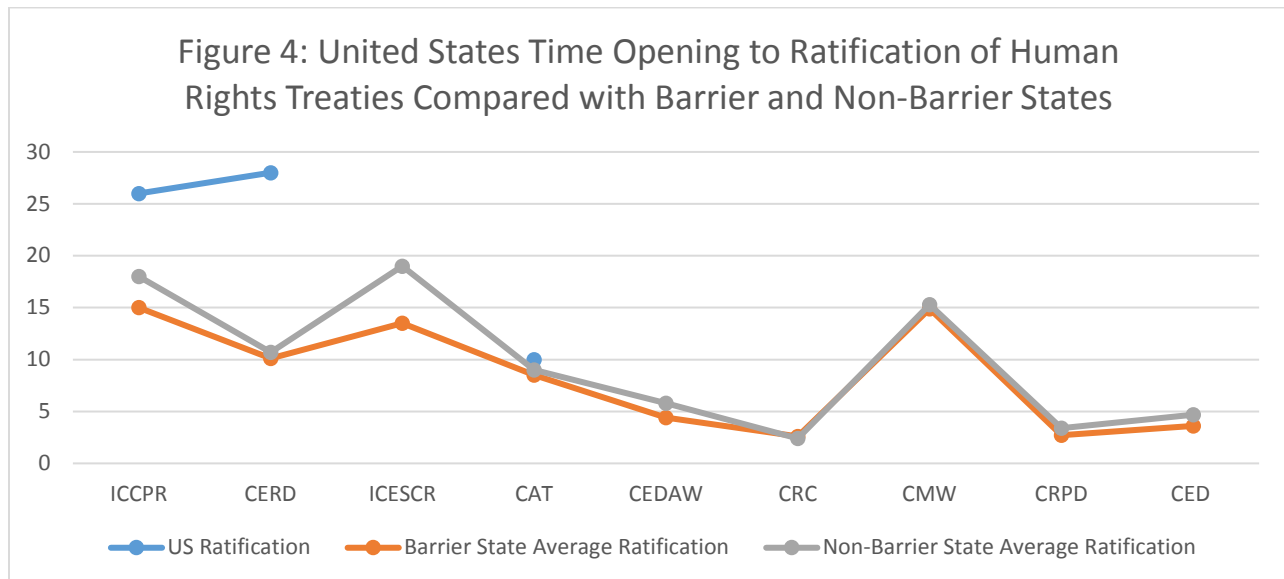
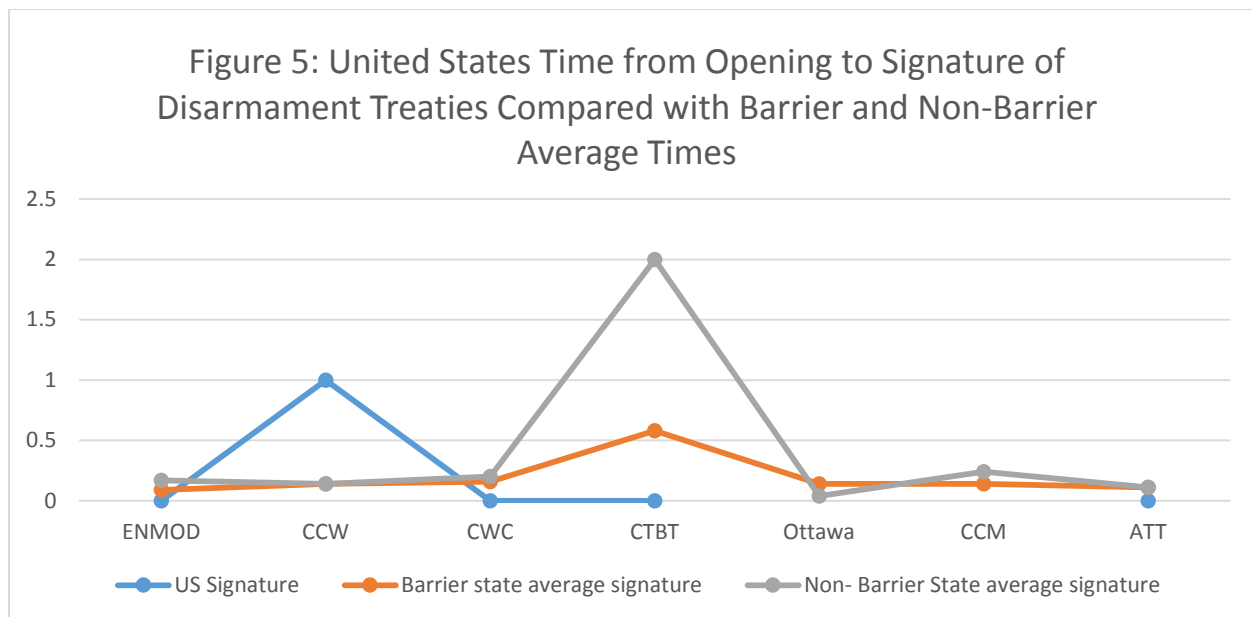


Figure 4 visualizes time from opening to ratification in the core United Nations human rights treaties. The United States has only ratified 3 of the 9 treaties, the ICCPR, CERD, and CAT. Concerning those 3 treaties, the United States took longer than both barrier and non-barrier states, on average. The United States took notably longer than averaged ratification times for the ICCPR and CERD. The longer ratification timing supports my argument that states with domestic legislative barriers to ratification confront potential delays to ratification from these processes. As a result, we see barrier states such as the United States signing earlier than non-barrier states and potentially ratifying later, as the United States did in the cases of the ICCPR, CERD, and CAT.

Across the 7 Disarmament treaties, the United States signed and ratified 3 treaties, only signed 2, and did not commit at all to the remaining 2 treaties. The United States followed

through with ratifying the Convention on the Prohibition of Military or any other Hostile use of Environmental Modification Techniques (ENMOD), the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW), and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC). Of these treaties the United States did ratify, it did so, on average 7 years after the opening for signature. The gap between signature and ratification, on average, was also about 7 years for these treaties. The United States signed both The Arms Trade Treaty (ATT) and Comprehensive Nuclear-Test-Ban Treaty (CTBT) the year the treaties opened for signature. As of March 2016, the United States has yet to ratify. The standing gap between opening and the present time is 3 and 20 years, respectively for the ATT and CTBT. The United States did not commit at all to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (The Ottawa Convention) or the Convention on Cluster Munitions (CCM). The standing gap between opening and the present time for these treaties is 19 and 8 years, respectively for the Ottawa Convention and the CCM.



States signed ENMOD on average .13 years after treaty opening and ratified 3.3 years after opening. The United States signed ENMOD on May 18, 1977 the very day the treaty opened for signature, slightly faster than the overall state average of .13 years post opening. The United States signed 5 of the possible 7 United Nations Disarmament treaties. Of those 5, the United States signed 4 treaties faster than both barrier and non-barrier state signature averages. It took the United States the longest amount of time to sign the CCW, taking 1 year after treaty opening to sign.

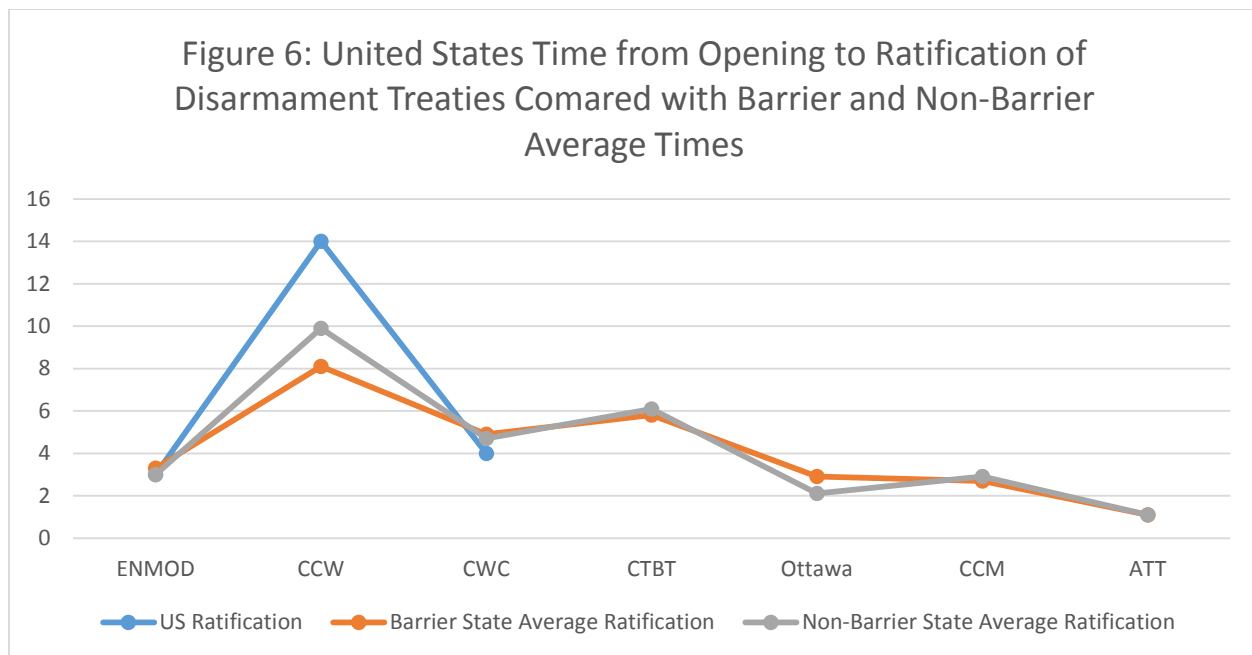


Figure 6 depicts the length of time from opening of UN disarmament treaties until ratification. The Graph compares the time the United States took with the average times of barrier states and non-barrier states to ratifying disarmament treaties. Of the 7 treaties, the United States only ratified 3. One of the treaties, the CCW, took the United States years longer than both the barrier and non-barrier state groups. The United States ratified the CCW 14 years after the treaty opened, which non-barrier states ratified, on average, 10 years post-opening, and barrier states ratified, on average, 8 years post-opening.

Takeaway from Disarmament and Human Rights Comparison

The comparison data of the United States treaty commitment patterns across the human rights and disarmament issue areas and with other states, highlights several notable patterns. First, the United States, and all states, on average, took much longer to commit to human rights treaties than to disarmament treaties. The average time it took for all states to ratify a disarmament treaty was 4.2 years. This contrasts with the 9 years, on average, it took states to

ratify human rights treaties. In both issue areas, the United States took longer, on average, to ratify. It took the United States, on average, 21 years to ratify human rights treaties compared with 7 years to ratify disarmament treaties.

Second, the United States, as presented in my argument, signed early and ratified later. The United States signed human rights treaties, on average, 4.8 years after opening, compared with an all-state average of 5.8. The United States signed disarmament treaties, on average, .2 years after opening, compared with an all-state average of .3 years. States committed much faster to disarmament treaties. The pattern of signing treaties earlier than other states and ratifying later than them held across both human rights and disarmament treaties.

Third, the United States committed to human rights and disarmament treaties in slightly varied ways. The United States signed 7 out of 9 human rights treaties, about 78% of the United Nations identified core human rights treaties. The United States signed slightly fewer of the disarmament treaties, signing 5 out of 7 of the United Nations disarmament treaties, or 71% of them. While the United States signed more of the human rights treaties, it ratified more of the disarmament treaties. It ratified 3 out of 9 human rights treaties, or 33% and 3/7 of the disarmament treaties, or 42% of them. From these frequencies, I can note that the United States is more likely to only sign human rights treaties than only sign disarmament treaties. In approaching disarmament treaties, the United States was more likely to follow through with ratification after signing. The United States took, on average, 16 years in-between signing and ratifying human rights treaties. It took only 7 years, on average, in between signing and ratifying disarmament treaties.

Overall action was faster and more frequent for the United States towards disarmament treaties than human rights treaties. While there was this noted issue area difference, the United States constantly held the pattern of signing treaties in fewer years than other states and taking more years to ratify. Even with the difference internal to the United States in timing between human rights and disarmament treaties, the United States pattern held in relation to other states' commitment behavior.

The Netherlands signed and ratified all 7 of the United Nations Disarmament treaties. The Netherlands signed all of the 7 treaties the year they each opened for signature, making the average time of signature after opening 0 years. The gap between signature and ratification, on average, was 3.3 years. The Netherlands also had an average time between treaty opening and ratification of 3.3 years.

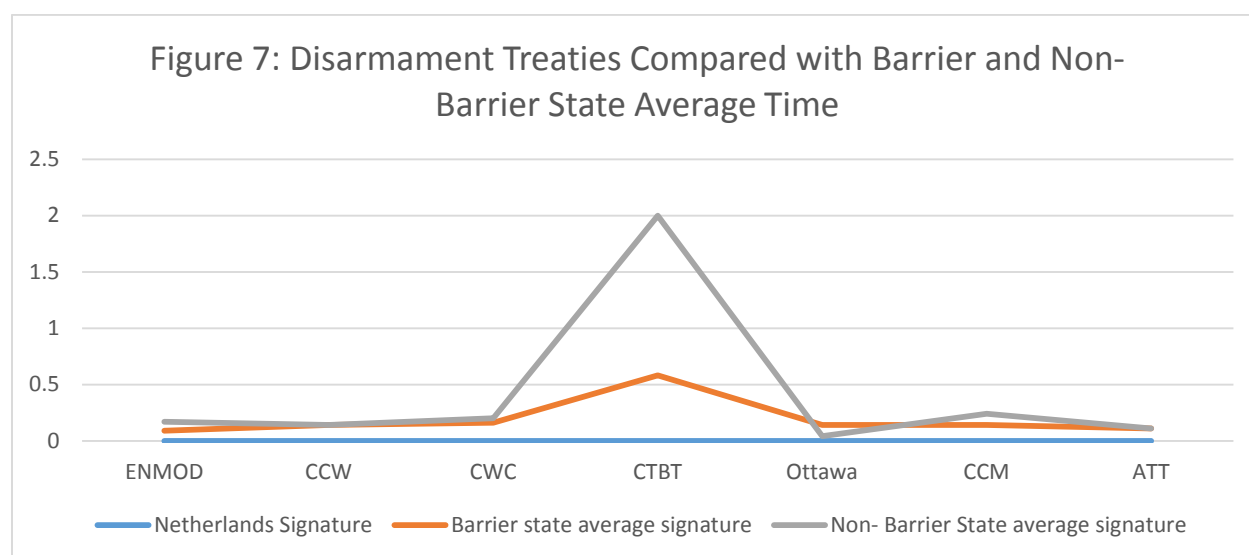


Figure 27 depicts the time the Netherlands took from opening to signature of disarmament treaties compared with barrier and non-barrier states. Consistently across all treaties, the Netherlands signed within a year of treaty opening. This is slightly faster than the

average time it took the other state groups. Barrier-states signed disarmament treaties, on average, within .20 years after opening for signature. Non-barrier states took a little longer, signing disarmament treaties, on average, .40 years after opening for signature.

The Netherlands signature timing did not vary by treaty and/or specific disarmament topic covered. This contrasts with the state average times to signature from barrier and non-barrier states, which were noticeably longer for the CTBT. Non-barrier state signing average of the CTBT was 2 years, noticeably higher than the overall average time of .40 years. Barrier-states also had an increased time to signature for the CTBT, at about .6 years, compared with .2 years for other disarmament treaties.

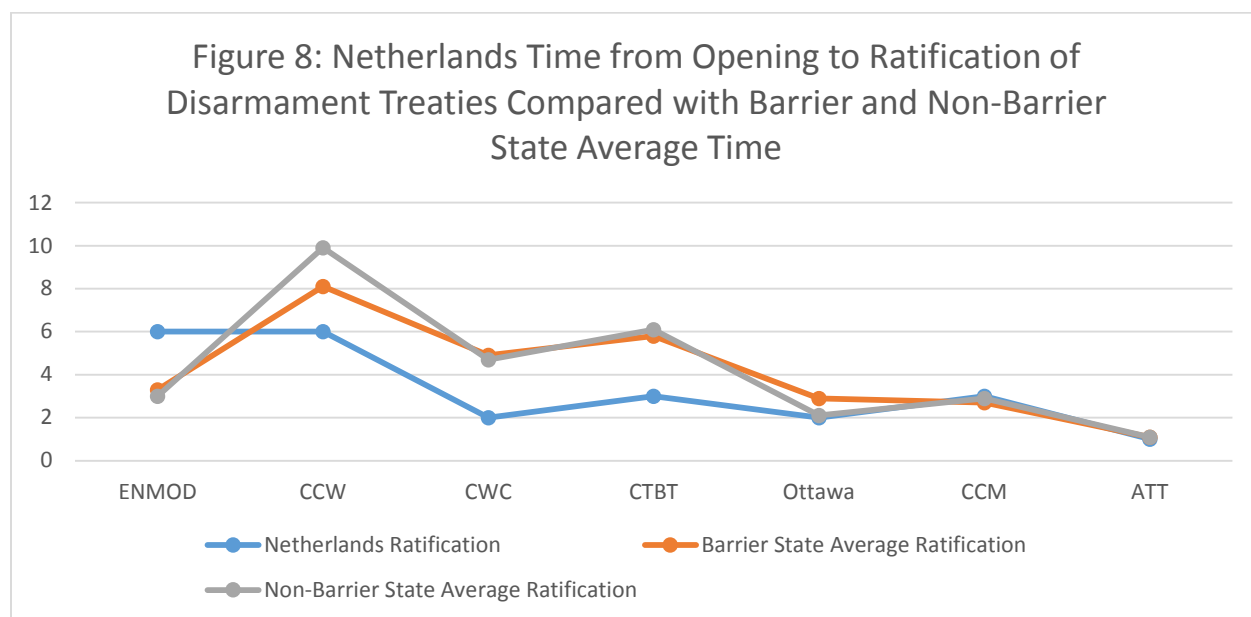


Figure 8 shows the Netherlands timing from opening to ratification of UN disarmament treaties compared with barrier and non-barrier state group averages. The Netherlands ratified all 7 of the disarmament treaties. The Netherlands ratified 3 of the treaties (the CCW, CWC, and CTBT) faster than both barrier and non-barrier state group averages. It took the Netherlands longer than both barrier and non-state barrier averages to ratify the ENMOD treaty. The

Netherlands ratified 3 treaties, the Ottawa Convention, the CCM, and the ATT, at approximately the same number of years after treaty opening as the barrier and non-barrier state group averages. The largest gaps between the Netherlands ratification timing and the other state groups occurred with ratification of the ENMOD, CWC, and CTBT. The Netherlands ratified the CWC and CTBT about 3 years faster than the other state groups. Alternatively, the Netherlands ratified the ENMOD about 3 years slower than the other state groups.

Takeaway from Disarmament and Human Rights Comparison

Comparing the Netherlands commitment to United Nations human rights and disarmament treaties produces several insights about treaty commitment behavior.

First, the Netherlands consistently signed treaties earlier than other states. The Netherlands signed human rights treaties, on average, .88 years after opening for signature, compared with an all-state average of 5.8. The Netherlands signed disarmament treaties less than a year after opening for signature, an average of 0 years, compared with an all-state average of .3 years. Across both treaties in both issue areas, the Netherlands, on average signed much earlier than other states. This holds consistent with my argument that states facing domestic legislative barriers to ratification will use signature as an easier, faster avenue for commitment prior to gaining the legislative support required for ratification.

Second, the Netherlands committed to the treaties in somewhat different ways based on treaty issue area. The Netherlands signed 8 out of 9 human rights treaties, about 89% of the United Nations-identified core human rights treaties. The Netherlands signed all 7, 100%, of the disarmament treaties. The Netherlands ratified 7 of the 9 human rights treaties, compared with 100% of the disarmament treaties. The Netherlands had an average gap of 3.3 years between

signing and ratifying disarmament treaties compared with an average gap of 6.7 years between signing and ratifying human rights treaties. It took the Netherlands, on average, twice as long between signing and ratifying human rights treaties as it did between signing and ratifying disarmament treaties.

Overall, commitment action was faster and more common for the Netherlands toward disarmament treaties than human rights treaties. There was a noted issue area difference between human rights and disarmament in terms of length of time it took for commitment actions, the Netherlands consistently committed to treaties earlier than other states. Its earlier commitment was particularly evident when examining its signing and when compared with states without domestic barriers to ratification.

Canada signed and ratified 6 of the 7 disarmament treaties. Each treaty Canada signed it followed through with ratification. The only treaty Canada did not commit to was the Arms Trade Treaty (ATT). Canada signed all of the 6 treaties it committed to within the first year of treaty opening. The gap between signature and ratification, on average was about 4.7 years. The CCW as a treaty it took Canada notably longer to ratify, with a 13 year gap between signature and ratification.

Canada consistently signed all six disarmament treaties it committed to in less than a year after the treaties opened for signature. This contrasts with other states which on average took longer to sign the CTBT. Non-barrier states, on average, took almost 4 times longer to sign the CTBT than barrier states, on average. Canada signed the treaty faster than both groups, in less than a year.

Takeaway from Disarmament and Human Rights Comparison

Comparing Canada's commitment across United Nations human rights and disarmament treaties produces several insights about Canada's treaty commitment behavior. First, Canada consistently committed to treaties quickly. Canada signed human rights treaties, on average, .4 years after opening for signature. This compares with an overall state average of 5.8 years to signature. Canada signed disarmament treaties even faster, signing all 7 in less than a year after opening for signature, averaging 0 years to sign. This compares with an overall state average of .3 years to sign disarmament treaties. Across both issue areas, Canada signed faster, than average. I argue that states with barriers to ratification will be likely to do this to signal. As a state without domestic legislative barriers to ratification, I did not posit that Canada would or need to signal earlier commitment via early signature.

Second, Canada had high levels of commitment for both issue areas. Canada more readily committed to disarmament treaties than human rights treaties. Canada signed all 7 disarmament treaties within the first year after treaty opening and was able to follow through with ratification with all 7. In contrast, Canada missed the original window for signature and to be an original party with 2 human rights treaties. Canada took slightly longer to ratify disarmament treaties, on average, than other states did taking 4.7 and 4.2 years respectively after opening for signature. Alternatively, Canada ratified human rights treaties notably faster than other states, on average. Canada took an average of 4.7 years while all states, on average, took 9 years to ratify human rights treaties after treaties opened for signature. It took Canada longer in between signing and ratifying disarmament treaties than it did human rights treaties. When pursuing the 2 step commitment process of signature and ratification, Canada had an average gap of 2.6 years toward human rights commitment compared with 4.7 with disarmament treaties.

Overall, Canada was faster to sign disarmament treaties but faster to ratify human rights treaties. Unlike the Netherlands and the United States, there was not a stark contrast in commitment time to the treaties based on issue area. This makes sense in the Canadian context as the executive ratifies treaty law. The removal of parliament from the ratification approval process also removes debates on controversial elements, aspects, and articles of treaties. While such debate may contribute to the delay in ratification in states with domestic barriers to ratification, this was not the case in Canada, where no such legislative barriers to ratification

Works Cited

- Abbott, Kenneth and Duncan Snidal. 2000. "Hard and Soft Law in International Governance." *International Organization* 54 (3):421-56. doi: 10.1162/002081800551280
- Abbott, Kenneth, Robert Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal. 2000. "The Concept of Legalization." *International Organization* 54 (3):401-19. doi: 10.1162/002081800551271
- Abiad, Nisrine. 2008. *Sharia, Muslim States, and International Human Rights Treaty Obligations: A Comparative Study*. London: British Institute of International and Comparative Law (BIICL).
- Ahl, Bjorn. 2009. *The Application of International Treaties in China: English Summary*. Heidelberg: Springer.
- Akinrinade, Babafemi. 2011. "Nigeria." In *International Law and Domestic Legal Systems: Incorporation, Transformation, and Persuasion*, edited by Dinah Shelton. Oxford: Oxford University Press.
- Alvarez, Jose. 2003. "Hegemonic International Law Revisited." *American Journal of International Law* 97:873- 887.
- An-Na'im, Abdullahi A. 1987. "Religious Minorities under Islamic Law and the Limits of Cultural Relativism." *Human Rights Quarterly* 9 (1):1-18.
- Asiwe, C.C. and Odirin Omiegbe. 2014. "Legal and Ethical Issues of Persons with Special Needs in Nigeria." *Educational Research and Review* 9 (15):516-22. doi: 10.5897/ERR2010.056
- Auserwald, David and Forrest Maltzman. 2003. "Policymaking through Advice and Consent: Treaty Consideration by the United States Senate." *The Journal of Politics* 65 (4):1097-1110.
- Barnett, Laura and Sebastian Spano. 2008. *Parliamentary Involvement in Foreign Policy*. Parliamentary Information and Research Service, Library of Parliament Ottawa, Publication no. 08-60E.
- Baudet, Thierry. 2012. *The Significance of Borders: Why Representative Government and the Rule of Law Require Nation States*. Leiden: Martinus Nijhoff Publishers.
- Bayefsky, Anne. F. 1997. "International Human Rights in Canadian Courts." In *Enforcing International Human Rights in Domestic Courts*, edited by Benedetto Conforti and Francesco Francioni, 295-328. Leiden: Martinus Nijhoff Publishers.

- Baylis, Elena A. 1999. "General Comment 24: Confronting the Problem of Reservations to Human Rights Treaties." *Berkeley Journal of International Law* 17 (2):277- 329. doi: 10.15779/Z38RD20
- Bitker, Bruno V. 1970. "The International Treaty against Racial Discrimination." *Marquette Law Review* 53 (1): 68-93.
- Bobo, Lawrence D. 2001. "Racial Attitudes and Relations at the Close of the Twentieth Century." In *American Becoming: Racial Trends and Their Consequences, Volume 1*, edited by Neil J Smelser, William Julius Wilson, and Faith Mitchell, 264-301. Washington, DC: The National Research Council.
- Bobo, Lawrence D. et al. 2012. "The Real Record on Racial Attitudes." In *Social Trends in American Life from the General Social Survey Since 1972*, edited by Peter V. Marsden, 38-83. Princeton: Princeton University Press.
- Boczek, Boleslaw Adam. 2005. *International Law: A Dictionary*. Washington, D.C.: Scarecrow Press.
- Bognetti, Giovanni. 1991. "The Role of the Italian Parliament in the Treaty-Making-Process." *Chicago-Kent Law Review* 67:391- 412.
- Boix, Carles. 2003. *Democracy and Redistribution*. Cambridge: Cambridge University Press.
- Bratton, Michael and Nicholas van de Walle. 1997. *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*. Cambridge: Cambridge University Press.
- Busby, Joshua W. 2010. *Moral Movements and Foreign Policy*. Cambridge: Cambridge University Press.
- Butler, Clark. 2012. *Child Rights: The Movement, International Law, and Opposition*. First edition. West Lafayette, IN. Purdue University Press.
- Buxbaum, Richard M. 2004. "Diffusion of Law." In *International Encyclopedia of the Social Sciences*, edited by William A. Darity, Jr. Farmington Hills: Macmillian Press.
- Canadian Department of Justice. "International Human Rights Treaty Adherence Process in Canada." *Canadian Department of Justice*. Last modified November 10, 2016. <http://www.justice.gc.ca/eng/abt-apd/icg-gci/ihrl-didp/ta-pa.html>.
- Canadian Library of Parliament. 1992. "Senate Debates, 34th Parliament, 3rd Session: Vol. 2." *Canadian Parliamentary Historical Resources*. Accessed November 10, 2016. http://parl.canadiana.ca/view/oop.debates_SOC3403_02/19?r=0&s=4
- Canadian Library of Parliament. 2015. "Senate Debates, 41st Parliament, 2nd Session: Vol. 149,

- Issue 122". *Canadian Parliamentary Historical Resources*. Accessed November 29, 2016. http://www.parl.gc.ca/content/sen/chamber/412/debates/122db_2015-02-26-e.htm#2
- Camp Keith, Linda. 1999. "The United Nations International Covenant on Civil and Political Rights: Does it Make a Difference in Human Rights Behavior?" *Journal of Peace Research* 36 (1): 95-118. doi: 10.1177/0022343399036001006
- Carnegie Endowment for International Peace. 1917. *Annual Report of 1917*. Washington, DC: Carnegie Endowment for International Peace.
- Chayes, Abram and Antonia Handler Chayes. 1998. *The New Sovereignty: Compliance with International Regulatory Regimes*. Cambridge: Harvard University Press.
- Civil Rights Congress. 1951. *We Charge Genocide: The Historic Petition to the United States for Relief from a Crime of the United States Government against the Negro People*, 3rd ed. New York: International Publishers.
- Committee on the Elimination of Discrimination against Women. "Thirteenth Session Summary Record of the 234th Meeting." *United Nations Human Rights*. 17 January 1994. Accessed at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDA.W%2fC%2fSR.234&Lang=en
- Congressional Research Service Library of Congress. 2001. *Treaties and other International Agreements: The Role of the United States Senate, prepared for the Committee on Foreign Relations*, 66-922 CC (Washington, DC), <http://www.gpo.gov/fdsys/pkg/CPRT-106SPRT66922/pdf/CPRT-106SPRT66922.pdf>
- Conrad, Courtenay R. 2012. "Divergent Incentives for Dictators: Domestic Institutions and (International Promises Not to) Torture." *Journal of Conflict Resolution*. 1-34. doi: 10.1177/0022002712459707
- Crabb, Cecil van Meter, Jr., Glenn J. Antizzo, and Leila E. Sarieddine. 2000. *Congress and the Foreign Policy Process: Modes of Legislative Behavior*. Baton Rouge: Louisiana State University Press.
- Damrosch, Lori Risler. 1991. "The Role of the United States Concerning "Self-Executing" and "Non-Self-Executing" Treaties." *Chicago-Kent Law Review* 67:515-32.
- Daniel, Audrey. 2011. "The Intent Doctrine and CERD: How the United States Fails to Meet International Obligations in Racial Discrimination Jurisprudence." *DePaul Journal for Social Justice* 4 (2): 262-312.
- David, Rene and John EC Brierly. 1978. *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*, 2nd ed. New York: Free Press.

- Dia, Xinyuan. 2006. "The Conditional Nature of Democratic Compliance." *Journal of Conflict Resolution* 50 (5): 690-713.
- Diamond, Larry Jay. 2002. "Elections without Democracy: Thinking about Hybrid Regimes." *Journal of Democracy* 13 (2):21-35. doi: 10.1353/jod.2002.0025
- Diehl, Paul F. and Charlotte Ku. 2010. *The Dynamics of International Law*. Cambridge: Cambridge University Press.
- Donnelly, Jack. 1982. "Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights." *The American Political Science Review* 76 (2): 303-16. doi: 10.1017/S0003055400187015
- Donnelly, Jack. 1986. "International Human Rights: A Regime Analysis." *International Organization* 40 (3): 599-642. doi: 10.1017/S0020818300027296
- Downs, George W., David M. Rocke, and Peter N. Barsoom. 1996. "Is the Good News about Compliance Good News about Cooperation?" *International Organization* 50 (3): 379-406. doi: 10.1017/S0020818300033427
- Dunoff, Jeffrey L., Steven R. Ratner, and David Wippman. 2010. *International Law: Norms, Actors, Process A Problem-oriented Approach*, 3rd. ed. Netherlands: Aspen Publishers.
- Eid, Elisabeth. 2001. "Interaction between International and Domestic Human Rights Law: A Canadian Perspective." *The International Centre for Criminal Law Reform and Criminal Justice Policy*. Accessed at <http://icclr.law.ubc.ca/sites/icclr.law.ubc.ca/files/publications/pdfs/E-Eid.PDF>.
- Executive Order. 1998. "Executive Order 13107: Implementation of Human Rights Treaties." *Administration of William J. Clinton*. Accessed at <https://www.gpo.gov/fdsys/pkg/WCPD-1998-12-14/pdf/WCPD-1998-12-14-Pg2459.pdf>.
- Fahim, Kareem and Mayy el Sheikh. "In Egypt Charter, New Rights, but No Great Change." *The New York Times*, December 1, 2013.
- Federal Republic of Nigeria. 2006. "National Action Plan for the Promotion & Protection of Human Rights in Nigeria." <http://www.ohchr.org/Documents/Issues/NHRA/nigeria.pdf>.
- Federal Republic of Nigeria. 2010. "Electoral Act, 2010." Official Gazette. Accessed at <http://www.parliament.am/library/norelectoral%20law/nigeria.pdf>
- Fikfak, Veronika. 2014. "Domestic Courts' Enforcement of Decisions and Opinions of the International Court of Justice." In *A Farewell to Fragmentation: Reassertion and Convergence in International Law*, edited by Mads Andenas and Eirik Bjorge, 343-370. Cambridge: Cambridge University Press.

- Finnemore, Martha and Kathryn Sikkink. 1998. "International Norm Dynamics and Political Change." *International Organization* 52 (4): 887-917. doi: 10.1162/002081898550789
- Finnemore, Martha and Stephen J. Toope. 2001. "Alternatives to "Legalization": Richer Views of Law and Politics." *International Organization* 55 (3):743058. doi: 10.1162/00208180152507614
- Forsythe, David P. 2000. *Human Rights in International Relations*. Cambridge: Cambridge University Press.
- Friedman, L.M. 1975. *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation.
- Galbraith, Jean. 2012. "Treaty Options: Towards a Behavioral Understanding of Treaty Design." *Virginia Journal of International Law* 53:309-64.
- Gandhi, Jennifer. 2010. *Political Institutions under Dictatorship*. Cambridge: Cambridge University Press.
- Gandhi, Jennifer and Ellen Lust-Okar. 2009. "Elections Under Authoritarianism." *Annual Review of Political Science* 12:403-22. doi: 10.1146/annurev.polisci.11.060106.095434
- Garcia, Michael John. 2015. "International Law and Agreements: Their Effect upon U.S. Law." *Congressional Research Service*. Accessed February 18, 2015. <https://fas.org/sgp/crs/misc/RL32528.pdf>.
- Gibson J.L. and G.A. Caldeira. 1997. "The Legal Cultures of Europe." *Law and Society Review* 30 (1):55-85.
- Gise, Robin H. 1999. "Rethinking McCleskey v. Kemp : Home US Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination Provides a Remedy for Claims of Racial Disparity in Death Penalty Cases." *Fordham Int'l L.J.* 22 (5): 2270, 2298.
- Goldsmith, Jack L. and Eric A. Posner. 2005. *The Limits of International Law*. Oxford: Oxford University Press.
- Goodman, Ryan. 2002. "Human Rights Treaties, Invalid Reservations, and State Consent." *The American Journal of International Law* 96: 531-60.
- Grotius, Hugo. 1695. *The Law of War and Peace*.
- Guzman, Andrew. 2002. "A Compliance-Based Theory of International Law." *California Law Review* 90 (6): 1823-88. doi: 10.15779/Z388728
- Guzman, Andrew. 2008. *How International Law Works: A Rational Choice Theory*. Oxford: Oxford University Press.

- Habeb, W. Mark and I. William Zartman. 1986. *The Panama Canal Negotiations*. Washington D.C.: Johns Hopkins Foreign Policy Institute.
- Hafner-Burton, Emilie M. and Kiyoteru Tsutsui. 2005. "Human Rights in a Globalizing World: The Paradox of Empty Promises." *American Journal of Sociology* 110 (5):1373-1411.
- Hafner-Burton, Emilie M., Miles Kahler and Alex H. Montgomery. 2009. Network "Analysis for International Relations." *International Organization* 63: 559-92.
10.1017/S0020818309090195
- Hafner-Burton Emilie M. and James Ron. 2009. "Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes." *World Politics* 61 (2):260-401. doi:
10.1017/S0043887109000136
- Hafner-Burton, Emilie M., Laurence R. Helfer, and Christopher J. Fariss. 2011. "Emergency and Escape: Explaining Derogations from Human Rights Treaties." *International Organization* 65 (4): 673-707. doi: 10+10170S002081831100021X
- Halashetti, Jagadish. 2011. "Theoretical Analysis of Domestic Application of International Human Rights Law within Municipal Sphere." *The Law Review*. Last modified June 22, 2011. <http://thelawreview.com/theoretical-analysis-domestic-application-international-human-rights-law-within-municipal-sphere/>.
- Haljan, David. 2012. *Separating Powers: International Law before National Courts*. The Netherlands: Springer Science & Business Media.
- Haller, Hans and Steinar Holden. 1997. "Ratification Requirement and Bargaining Power." *International Economic Review* 38 (4): 825-51. doi: 10.2307/2527218
- Harmsen, Robert. 2005. "Referendum Briefing Paper no. 13: The Dutch Referendum on the Ratification of the European Constitutional Treaty." *European Parties Elections and Referendums Network*. Accessed November 13, 2016.
<https://www.sussex.ac.uk/webteam/gateway/file.php?name=epern-ref-no-13.pdf&site=266>
- Hathaway, Oona. 2002. "Do Human Rights Treaties Make a Difference?" *Yale Law Journal*. 111:1935.
- Hathaway, Oona A. and Ariel N. Lavinbuk. 2006. "Rationalism and Revisionism in International Law: Review of The Limits of International Law." *Faculty Scholarship Series Paper* 835. New Haven: Yale Law School.
- Hathaway, Oona. 2007. "Why Do Countries Commit to Human Rights Treaties?" *The Journal of Conflict Resolution*. 51 (4):588-621. doi: 10.1177/0022002707303046

- Hathaway, Oona, Sabria McElroy, and Sara Aronchick Solow. 2012. "International Law at Home: Enforcing Treaties in U.S. Courts." *The Yale Journal of International Law* 37(1): 51- 106.
- Hillebrecht, Courtney. 2012. "The Domestic Mechanisms of Compliance with International Human Rights Law: Cases from the Inter-American Human Rights System." *Human Rights Quarterly* 34 (4): 959-85. doi: 10.1353/hrq.2012.0069
- Helfer, Laurence R. 2006. "Not Fully Committed? Reservations, Risk, and Treaty Design." *The Yale Journal of International Law* 31:366-81.
- Henkin, Louis. 1995. U.S. Ratification of Human Rights Treaties: The Ghost of Senator Bricker. *The American Journal of International Law*. 89 (2):341-350.
- Hollyer, James R. and B. Peter Rosendorff. 2011. "Why Do Authoritarian Regimes Sign the Convention against Torture? Signaling, Domestic Politics, and Non-Compliance." *Quarterly Journal of Political Science* 6 (3-4): 275-327.
- Holtmaat, Rikki. 2004. "Towards Different Law and Public Policy. The Significance of Article 5a CEDAW for the elimination of structural gender discrimination." *Ministry of Social Affairs and Employment in the Netherlands*. Accessed November 14, 2016. <https://www.rijksoverheid.nl/.../towards-different-law-and-public-policy...>
- Holtmaat, Riiki. 2008. "Preventing Violence against Women: The Due Diligence Standard with Respect to the Obligation to Banish Gender Stereotypes on the Grounds of Article 5(a) of the CEDAW Convention." In *Due Diligence and Its Application to Protect Women from Violence*, edited by Carin Benninger-Budel. The Netherlands: Brill.
- Hood, J. Larry. 1993. "The Nixon Administration and the Revised Philadelphia Plan for Affirmative Action: A Study in Expanding Presidential Power and Divided Government." *Presidential Studies Quarterly* 23 (1): 145-167.
- Howe, R. Brian. 2012. "Implementing the Convention on the Rights of the Child in Canada: A Question of Commitment." In *Child Rights: The Movement, International Law, and Opposition*, edited by Clark Butler, 141-156. West Lafayette: Purdue University Press.
- Human Rights Committee, 65th Session, CCPR/C/79/Add.105, 7 April 1999, at paragraph 10
- Human Rights Watch. 2005. "*Rest in Pieces*": *Nigeria: Police Torture and Deaths in Custody in Nigeria*. Accessed November 14, 2016. <https://www.hrw.org/report/2005/07/27/rest-pieces/police-torture-and-deaths-custody-nigeria>
- Human Rights Watch. 2009. *United States Ratification of International Human Rights Treaties*. Accessed November 14, 2016. <https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties>

- Hume, David. 1742, 1752. *Essays Moral, Political and Literary*.
- International Encyclopedia of Social and Behavioral Sciences*. 2001. New York: Elsevier, Pergamon Press.
- Jackson, John. 1992. "Status of Treaties in Domestic Legal System: A Policy Analysis." *The American Journal of International Law* 86 (2):310-40.
- Joireman, Sandra Fullerton. 2002. "Inherited Legal Systems and Effective Rule of Law: Africa and the Colonial Legacy." *The Journal of Modern African Studies* 39 (4): 571-96. doi: 10.1017/S0022278X01003755
- Jennings, James. 1997. "The International Convention on the Elimination of All Forms of Racial Discrimination: Implications for Challenging Racial Hierarchy." *Howard Law Journal* 40 (3): 597-618.
- Jensen, Nathan M., Edmund Malesky, and Stephen Weymouth. 2014. "Unbundling the Relationship between Authoritarian Legislatures and Political Risk." *British Journal of Political Science* 44 (3): 655-684. doi: 10.1017/S0007123412000774
- Johnson, Toni. 2013. "Council on Foreign Relations Report." *Congress and U.S. Foreign Policy*. Accessed November 14, 2016. <http://www.cfr.org/united-states/congress-us-foreign-policy/p29871>
- Kahler, Miles. 2001. "Conclusion: The Causes and Consequences of Legalization." In *Legalization and World Politics*, edited by Judith L. Goldstein, Miles Kahler, Robert O. Keohane and Anne-Marie Slaughter, 277-299. Cambridge: MIT Press.
- Kanter, Arlene S. 2006. "The Promise and Challenge of the United Nations Convention on the Rights of Persons with Disabilities." *Syracuse Journal of International Law and Comparative* 34:287-321.
- Kaufman, Natalie Hevener. 1990. *Human Rights Treaties and the Senate: A History of Opposition*. Chapel Hill: University of North Carolina Press.
- Kelley, Judith G. and Jon C. W. Pevehouse. 2015. "An Opportunity Cost Theory of US Treaty Behavior." *International Studies Quarterly* 59 (3): 531-43. doi: 10.1111/isqu.12185
- Kennedy, Duncan. 1980. "Toward an Historical Understanding of Legal Consciousness: The Case of Classical Legal Thought in America, 1850-1940." *Research in Law and Sociology* 3:3-24.
- Keohane, Robert 1989. *International Institutions and State Power*. Boulder: Westview.

- Keohane, Robert and Lisa L. Martin. 1995. "The Promise of Institutional Theory." *International Security* 20 (1):39-51.
- Kingdom of the Netherlands. 2014. "Sixth Periodic Report Concerning the Implementation of the International Convention on the Elimination of All Forms of Discrimination against Women." *Office of the High Commissioner*.
- Kirkchiyen, Marina. 2012. "Perceptions of Law and Social Order: A Cross-National Comparison of Collective Legal Consciousness." *Wisconsin International Law Journal* 29 (2):366-92. 325-57.
- Klabbers, Jan. 1995. "The New Dutch Law on the Approval of Treaties." *The International and Comparative Law Quarterly*. 44 (3):629-43.
- Klarevas, Louis. 2003. "The Law: The Constitutionality of Congressional-Executive Agreements." *Presidential Studies Quarterly* 33 (2): 394-407.
- Koh, Harold Hongju. 1991. "Why Do Nations Obey International Law?" *Yale Law Journal* 106: 2599.
- Korey, William. 1967. "Human Rights treaties: Why is the U.S. Stalling?" *Foreign Affairs* April 1967. Accessed at <https://www.foreignaffairs.com/articles/1967-04-01/human-rights-treaties-why-us-stalling>
- Krasner, Stephen D. 1982. "Structural Causes and Regime Consequences: Regimes as Intervening Variables." *International Organization* 36 (2): 185-205.
- Kreindler, Richard H. 2010. "Parallel Proceedings: A Practitioner's Perspective." In *The Backlash against Investment Arbitration: Perceptions and Reality*, edited by Michael Waibel, Asha Kaushal, Ky-Hwa Liz Chung, and Claire Balchin, 127-150. New York: Kluwer Law International.
- Krutz, Glen and Jeffrey Peake. 2009. *Treaty Politics and the Rise of Executive Agreements*. Ann Arbor: University of Michigan Press.
- Kuijer, Martin. 2015. "Guaranteeing International Human Rights Standards In the Netherlands: The Parliamentary Dimension." In *Parliaments and Human Rights: Redressing the Democratic Deficient*, edited by Hunt, Murray, Hayley Hooper, and Paul Yowell. London: Bloomsbury Publishing.
- Kydd, Andrew. 2000. "Trust, Reassurance, and Cooperation." *International Organization* 54(2): 325-357.
- Lang, Raymond. 2014. "Disability, Citizenship and Global Governance: The Challenge of the Un Convention of the Rights of Persons with Disabilities to Create a Paradigm Shift in Disability Policy and Programing." <http://eadi.org/gc2014/index.php/gc2014-lang->

14.pdf@page=downloadpaper&filename=gc2014-lang-
14.pdf&form_id=14&form_index=2&form_version=final

- Lantis, Jeffrey S. 2005. Leadership Matters: International Treaty Ratification in Canada and the United States. *American Review of Canadian Studies* 35 (3):383-421. doi: 10.1080/02722010509481377
- Lantis, Jeffrey S. 2008. *The Life and Death of International Treaties: Double-Edged Diplomacy and the Politics of Ratification in Comparative Perspective*. Oxford: Oxford University Press.
- Lauwers, Sophie. 2007. "Issue Histories the Netherlands: Series of Timelines of Policy Debates." *QUING Project*. Vienna: Institute for Human Sciences (IWM). Accessed November 14, 2016. http://www.quiring.eu/files/results/ih_netherlands.pdf
- Lieberman, Evan S. 2005. "Nested Analysis as a Mixed-Method Strategy for Comparative Research." *American Political Science Review* 99(3): 435-452.
- Lijnzaad, Elizabeth. 1995. *Reservations to UN Human Rights Treaties: Ratify and Run?* Leiden: Martinus Nijhoff Publishers.
- Lind A., Tyler, T.R. 1988. *The Social Psychology of Procedural Justice*. New York: Plenum Press.
- Long, J. Scott. 1997. *Regression Models for Categorical and Limited Dependent Variables*. Thousand Oaks: Sage.
- Lupu, Yonatan. 2013. "Best Evidence: The Role of Information in Domestic Judicial Enforcement of International Human Rights Agreements." *International Organization* 67 (3): 469-503. doi: 10.1017/S002081831300012X
- Manirabona, Amissi M. and Francois Crepeau. 2012. "Enhancing the Implementation of Human Rights Treaties in Canadian Law: The Need for a National Monitoring Body." *Canadian Journal of Human Rights* 1 (1): 25-60.
- Mansfield, Edward D., Helen V. Milner, and B. Peter Rosendorff. 2002. "Why Democracies Cooperate More: Electoral Control and International Trade Agreements." *International Organization* 56 (3):477-513.
- Marcus, Paul. 1970. "The Philadelphia Plan and Strict Racial Quotas in Federal Contracts." *Faculty Publications Paper* 555. <http://scholarship.law.wm.edu/facpubs/555>
- Morganthau, Hans J. 1985. *Politics among Nations: The Struggle for Power and Peace*. New York: McGraw-Hill.
- McCarty, Nolan and Rose Razaghian. 1999. "Advice and Consent: Senate Responses to

- Executive Branch Nominations 1885-1996." *American Journal of Political Science* 43 (4): 1122-43.
- McDougall, Gay J. 1997. "Toward a Meaningful International Regime: The Domestic Relevance of International Efforts to Eliminate All Forms of Racial Discrimination." *Howard Law Journal* 40 (1996-1997):571- 96.
- Mernissi, F. 2001. "Women and Islam: An Historical and Theological Enquiry." Oxford: Blackwell.
- Meron, Theodor. 1985. "The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination." *The American Journal of International Law* 79 (2): 283-318.
- Mitchell, Sara McLaughlin, Jonathan J. Ring, and Mary K. Spellman. 2013. "Domestic Legal Traditions and States' Human Rights Practices." *Journal of Peace Research* 50 (2): 203-217. doi: 10.1177/0022343312466561
- Mitchell, Ron. 1994. "Regime Design Matters: International Oil Pollution and Treaty Compliance." *International Organization* 48 (3): 425-58.
- Moravcsik, Andrew. 2005. "The Paradox of US Human Rights Policy." In *American Exceptionalism and Human Rights*, edited by M. Ignatieff, 147-197. Princeton, Princeton University Press.
- Moravcsik, Andrew. 1997. "Taking Preferences Seriously: A Liberal Theory of International Politics." *International Organization* 51 (4): 513-53.
- Moustafa, Tamir. 2003. "Law Versus the State: The Judicialization of Politics in Egypt." *Law & Social Inquiry* 28 (4): 883-930. doi: 10.1111/j.1747-4469.2003.tb00826.x
- Mwenda, Teresa Njoroge, Ambrose Murangira, and Raymond Lang. 2009. "Mainstreaming the Rights of Persons with Disabilities in National Development Frameworks." *Journal of International Development* 21 (5): 662-72. doi: 10.1002/jid.1594
- Neumayer, Eric. 2005. "Do International Human Rights Treaties Improve Respect for Human Rights?" *The Journal of Conflict Resolution* 49 (6): 925-53. doi: 10.1177/0022002705281667
- Newport, Frank. 2013. "In U.S., 87% Approve of Black-White Marriage, vs. 4% in 1958." *Gallup*. Accessed at <http://www.gallup.com/poll/163697/approve-marriage-blacks-whites.aspx>
- New York Times, The. 1966. Goldberg Says U.S. Will Sign U.N. Pact for Racial Equality. July 7

1966. Accessed at <http://query.nytimes.com/gst/abstract.html?res=9A01E2DC113DE43BBC4F53DFB166838D679EDE&legacy=true>
- NTI. 2011. "Nigerian National Teachers Institute, Kaduna, Manual on Special Needs and Disabilities (SENDs) found from the Debt Relief Grand (DRG) under Millennium Development Goals (MDGs) Project 2011." Lagos, Nigeria: Axiom Learning Solutions Limited.
- NSRP. 2015. "What Violence Means to US: Women with Disabilities Speak." Nigeria Stability and Reconciliation Programme. Accessed at <http://www.nsrp-nigeria.org/wp-content/uploads/2015/09/What-Violence-Means-to-us-Women-with-Disabilities-Speak.pdf>
- OECD. 2011. "Global Forum on Transparency and Exchange of Information for Tax Purposes: Peer Reviews Global Forum on Transparency and Exchange of Information for Tax Purposes Canada." *Combined: Phase 1 and Phase 2. OECD Publishing.*
- Olutoyin, Babatunde Isaac. 2014. "Treaty Making and Its Application under Nigerian Law: The Journey So Far." *International Journal of Business and Management Invention* 31 (3): 7-18.
- Oomen, Barbara M. , Joost Guijt. And Matthias Ploeg. 2010. "CEDAW, the Bible and the State of the Netherlands: The Struggle over Orthodox Women's Political Participation and Their Responses." *Utrecht Law Review* 6 (2): 158- 74. doi: 10.18352/ulr.129
- Orfield, Gary, John Kucsera, and Genevieve Siegel-Hawley. 2012. "E Pluribus. . . Separation: Deepening Double Segregation for More Students." *The Civil Rights Project/ Proyecto Derechos Civiles*. Accessed November 15, 2016. http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/mlk-national/e-pluribus...separation-deepening-double-segregation-for-more-students/orfield_epluribus_revised_omplete_2012.pdf
- Paletta, Damian. 2015. "Treaties vs. Executive Agreements: When does Congress get a Vote?" *The Wall Street Journal*. March 10 2015. Accessed at <http://blogs.wsj.com/washwire/2015/03/10/treaties-vs-executive-agreements-when-does-congress-get-a-vote/>
- Pepinsky, Thomas B. 2014. "The Institutional Turn in Comparative Authoritarianism." *British Journal of Political Science* 44 (3):631-53. doi: 10.1017/S0007123413000021
- Policy and Legal Advocacy Centre. 2015. "Electoral Act of 2010 Simplified." UKAID. Accessed at <http://www.placng.org/new/publications/Electoral%20Act%20Simplified.pdf>
- Powell, Emilia Justyna and Sara McLaughlin Mitchell. 2007. "The International Court of Justice

- and the World's Three Legal Systems." *Journal of Politics* (2):397-415. doi: 10.1111/j.1468-2508.2007.00539.x
- Powel, Emilia Justyna and Jeffrey K. Staton. 2009. "Domestic Judicial Institutions and Human Rights Treaty Violation." *International Studies Quarterly* 53 (1): 149-74. doi: 10.1111/j.1468-2478.2008.01527.x
- Price, Richard. 1998. "Reversing the Gun Sights: Transitional Civil Society Targets Landmines." *International Organization* 52(3): 613-644.
- Putnam, Robert D. 1988. "Diplomacy and Domestic Politics: The Logic of Two Level Games." *International Organization* 42 (3): 427-460.
- Rahman-Figueroa, Talyn. 2012. *Celebrating the Rise of Women in Diplomacy: The Diplomatic Courier*. March 8, 2012. Accessed at <http://www.diplomaticcourier.com/celebrating-the-rise-of-women-in-diplomacy/>
- Raustiala, Kal and David G. Victor. 1998. "Conclusions." In *The Implementation and Effectiveness of International Environmental Commitments*, edited by David G. Victor, Kal Raustiala and Eugene B Skolnikoff, 659-707. Cambridge: MIT Press.
- Raustiala, Kal and Anne-Marie Slaughter. 2002. "International Law, International Relations, and Compliance." In *The Handbook of International Relations*, edited by Walter Carlsnaes, Thomas Risse and Beth Simmons. Thousand Oaks: Sage Publications, Ltd.
- Rehof, Lars Adam. 1993. *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination against Women*. Martinus Nijhoff Publishers.
- Reif, Linda C. 2013. *The Ombudsman, Good Governance, and the International Human Rights System*. New York: Springer.
- Remmert, James E. 1969. "Executive Order 11,246: Executive Encroachment." *American Bar Association Journal* 55 (11): 1037-40.
- Risse-Kappen, Thomas, Stephen C. Ropp, and Kathryn Sikkink (eds). 1999. *The Power of Human Rights: International Norms and Domestic Change*. Cambridge: Cambridge University Press.
- Roberts, Anthea. 2011. "Comparative International Law? The Role Of National Courts In International Law." *I.C.L.Q.* 60 (1), 57-92. doi: 10.1017/S0020589310000679
- Reiter, Dan and Allan C. Stam. 2002. *Democracies at War*. Princeton: Princeton University Press.
- Sandholtz, Wayne. 2015. "How Domestic Courts Use International Law." *Fordham*

- International Law Journal* 38 (2): 595-363.
- Sango, Precious. *Visible But Invisible: People Living with Disability in Nigeria*. Center for Learning Disabilities in Nigeria. Accessed at <https://books2africa.org/visible-but-invisible-people-living-with-disability-in-nigeria/>
- Seawright, Jason and John Gerring. 2008. "Case Selection Techniques in Case Study Research: A Menu of Qualitative and Quantitative Options." *Political Research Quarterly* 61 (2): 294-308. doi: 10.1177/1065912907313077
- Schermers, Henry. 1987. "Netherlands." In *The Effect of Treaties in Domestic law: The United Kingdom National Committee of Comparative Law, 7th Edition*, edited by Francis G. Jacobs and Shelley Roberts. London: Sweet & Maxwell.
- Schwelb, Egon. 1966. "The International Convention on the Elimination of All Forms of Racial Discrimination." *The International and Comparative Law Quarterly* 15 (4): 996-1068.
- Shearer, Ivan A. 1994. *Starkes' International Law, 11th ed.* London: Butterworths Kent.
- Shelton, Dinah. 1992. "Human Rights, Environmental Rights, and the Right to Environment." *Stanford Journal of International Law* 28:103.
- Silbey, Susan S. 2010. *Legal Culture and Cultures of Legality in Sociology of Culture: A Handbook*, edited by John R. Hall, Laura Grindstaff, Ming-cheng Lo, 470-479. London: Routledge Publishers, pp. 470-9.
- Simmons, Beth A. 2000. "International Law and State Behavior Commitment and Compliance in International Monetary Affairs." *American Political Science Review* 94 (4): 81-35.
- Simmons, Beth A. 2001. "The Legalization of International Monetary Affairs," in *Legalization and World Politics*, edited by Judith L Goldsetin, Miles Kahler, Robert O. Keohane and Anne-Mari Slaughter, 189-218. Cambridge: MIT Press.
- Simmons, Beth A. 2009. *Mobilizing for Human Rights: International Law in Domestic Politics*. Cambridge: Cambridge University Press.
- Simmons, Beth A. 2013. "From Ratification to Compliance: Quantitative Evidence on the Spiral Model." In *The Persistent Power of Human Rights: From Commitment To Compliance*, edited by Thomas Risse and Kathryn Sikkink, 43-60. Cambridge: Cambridge University Press.
- Slaughter, Anne-Marie. 1995. "International Law in a World of Liberal States." *European Journal of International Law* 6 (4):503-38.
- Sloss, David L., Michael D. Ramsey, and William S. Dodge. 2011. *International Law in the U.S.*

- Supreme Court*. Cambridge: Cambridge University Press.
- Sloss, David. 2012. "Domestic Application of Treaties." In *The Oxford Guide to Treaties*, edited by Duncan B. Hollis, 367-395. Oxford: Oxford University Press.
- Spamann, Holger. 2009. "Contemporary Legal Transplants: Legal Families and the Diffusion of (Corporate) Law." *Bingham Young University Law Review* 6:1813-77.
- Stern, W.B. 1936. "Kelsen's Theory of International Law." *The American Political Science Review* 30 (4): 736-41.
- Suto, Ryan. 2014. "Human Rights Treaties in Egypt: As Good as the Government at Upholds Them." Working Paper, The Tahir Institute for Middle East Policy.
<http://timep.org/analysis/human-rights-treaties-in-egypt-as-good-as-the-government-that-upholds-them/>.
- Swaine, Edward T. 2006. "Reserving." *The Yale Journal of International Law* 31:307.
- The Economist. "Why Won't America Ratify the UN Convention on Children's Rights?" October 6, 2013. <http://www.economist.com/blogs/economist-explains/2013/10/economist-explains-2>.
- Thibaut J, and Walker L. 1975. *Procedural Justice: A Psychological Analysis*. New York: L Erlbaum Associates.
- Tone, John. 2001. *Federal Constitutions and International Relations*. New York: MacMillan.
- Toope, Stephen. 2001. "Inside and Out: The Stories of International and Domestic Law." *University of New Brunswick Law Journal*, 50.
- Tyler, T.R. 1990. *Why People Obey the Law*. New Haven: Yale University Press.
- United Nations. 1995. "Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations of the Committee on the Rights of the Child: Canada." Committee on the Rights of the Child, 9th Session, June 20, 1995. CRC/C/15/Add.37.
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.37&Lang=en
- United Nations. 2007. "Legislative History of the Convention on the Rights of the Child." Volume I. Office of the United Nations High Commissioner for Human Rights.
<http://www.ohchr.org/Documents/Publications/LegislativeHistorycrc1en.pdf>.
- United Nations. 2009. "Not There Yet: Canada's Implementation of the General

- Measures of the Convention on the Rights of the Child.” A Joint Publication of the UNICEF Innocenti Research Centre and UNICEF Canada. http://www.unicef-irc.org/publications/pdf/canada_nty.pdf.
- United Nations Children’s Emergency Fund Canada (UNICEF Canada). 2009. “Aboriginal Children’s Health: Leaving No Child Behind.” Canadian Supplement to The State of the World’s Children. <http://www.nccah-ccnsa.ca/docs/nccah%20partner%20documents/UNICEF%20Report,%20English.pdf>.
- United Nations Committee on the Elimination of Racial Discrimination. 2008. “US CERD Obligations and Domestic Implementation.” <http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/cerd2008domesticimplementationarticle2.pdf>.
- United Nations Development Program (UNDP). 2016. “Ekaete's Story: Fighting the Good Fight for Disability Rights in Nigeria: Our Stories.” <http://www.ng.undp.org/content/nigeria/en/home/ourwork/democraticgovernance/successstories/disabilityrights.html>
- United Nations Treaty Series. 1999. Treaties and International Agreements Registered or Filed and Recorded with the Secretariat of the United Nations Volume 1658. Pg. 840 accessed at <https://treaties.un.org/doc/Publication/UNTS/Volume%201658/v1658.pdf>
- United Nations Treaty Series. 2010. Treaties and International Agreements Registered or Filed and Recorded with the Secretariat of the United Nations. Volume 1945. Pg. 396 accessed at <https://treaties.un.org/doc/Publication/UNTS/Volume%201945/v1945.pdf>.
- U.S. Human Rights Network CERD Working Group.. 2008. Response to the Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination. Accessed at www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/ushrn7.doc.
- United States State Department. 2011. “2010 Human Rights Report: Nigeria.” Bureau of Democracy, Human Rights, and Labor. Accessed at <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154363.htm>
- U.S. Congressional Records. 1966. “International Convention on the Elimination of All Forms of Racial Discrimination.” Treaty Documents. <https://www.congress.gov/treaty-document/95th-congress/18?q=%7B%22search%22%3A%5B%22Convention+the+Elimination+Racial+Discrimination%22%5D%7D&resultIndex=430>.
- United States Department of State. 1977. “Letter of Submittal.” December 17, 1977. http://www.foreign.senate.gov/imo/media/doc/treaty_95-19_95-21.pdf
- United States Office of the Clerk. 2016. “Election Statistics.” U.S. House of

- Representatives. http://clerk.house.gov/member_info/electioninfo/index.aspx
- Vagts, Detlev F. 2001. "Hegemonic International Law." *The American Journal of International Law* 95 (4): 846.
- Van den Brink, Marjolein. 2013. "The CEDAW after All These Years: Firmly Rooted in Dutch Clay?" In *Women's Human Rights: CEDAW in International, Regional and National Law*, edited by Anne Hellum and Henriette Sinding Aasen, 482-510. Cambridge: Cambridge University Press.
- Van Dijk, Piter and Bahiyyih G. Tahzib. 1991. "The Parliamentary Participation in the Treaty-Making Process of the Netherlands." *Chicago-Kent Law Review* 67 (2), 413-436.
- Van Ert, Gib. 2010. "Dubious Dualism: The Reception of International Law in Canada." *Valparaiso University Law Review* 44 (3): 927-34.
- Vagts, Detlev F. 2001. "Hegemonic International Law." *American Journal of International Law* 95: 843.
- Verma, S.K. 1998. *An Introduction to Public International Law*. Delhi: PHI Learning.
- Von Stein, Jana. 2005. "Do Treaties Constrain or Screen? Selection Bias and Treaty Compliance." *American Political Science Review* 99:611-22.
- Von Stein, Jana. 2012. "The Autocratic Politics of International Human Rights Agreements: The Pinochet Regime and Ratification of the Convention against Torture." Working Paper, International Studies Association Meeting 2012.
- Vreeland, James R. 2008. "Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture." *International Organization* 62 (1):65-101. doi: 10.1017/S002081830808003X
- Watt, Caitlin. 2010. Implementing CERD: A Call for Immediate Activist Input. Working Paper at the Kirwan Institute for the Study of Race and Ethnicity at the Ohio State University. Cross posted at the Huffington Post at http://www.huffingtonpost.com/caitlin-watt/implementing-cerd-a-call_b_388721.html
- Wernaart, Bart. 2013. *The Enforceability of the Human Rights to Adequate Food: A Comparative Study. Part 2: The Netherlands*. European Institute for Food Law. Wageningen: Wageningen Academic Publishers.
- Widener, Annemarie J. 2006. "Sharing the Caring: State, Family and Gender Equality in Parental Leave Policies." PhD Diss., Leiden University. <https://openaccess.leidenuniv.nl/dspace/bitstream/1887/4453/2/thesis+.pdf>
- Winship, Christopher and Robert D. Mare. 1984. "Regression Models with Ordinal Variables"

American Sociological Review 49:512-25.

Zartner, Dana. 2014. *Courts, Codes, and Custom: Legal Tradition and State Policy toward International Human Rights and Environmental Law*. Oxford: Oxford University Press.

Ziemele, Ineta and Lasma Liede. 2013. "Reservations to Human Rights Treaties: From Draft Guideline 3.1.12 to Guideline 3.1.5.6." *European Journal of International Law* 24(4): 1135-52. doi: 10.1093/ejil/cht068

Zhou, Min. 2014. "Signaling Commitments, Making Concessions: Democratization and State Ratification of International Human Rights Treaties, 1966-2006." *Rationality and Society* 26 (4): 475-508. doi: 10.1177/1043463114546313